

EXHIBIT F

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

-----:
:
PHILIP R. MCHUGH, :
:
Plaintiff, :
:

vs. :

CASE NO.
1:21-cv-00238

FIFTH THIRD BANCORP, et
al., :
:

Defendants.

Videotaped
Deposition of:

GARY R. HEMINGER

Taken:

By the Plaintiff

Pursuant to Notice

Date:

December 20, 2022

Time:

Commencing at 9:39 a.m.

Place:

Fifth Third Center
511 Walnut Street
Cincinnati, Ohio 45202

Before:

Wendy L. Raymer, RPR, CRR
and

Bruce L. Sandy, Videographer
Notaries Public-State of Ohio

1 APPEARANCES:

2 On behalf of the Plaintiff:

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4 and

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22 Also Present:

23 Philip R. McHugh

24 Phenise Poole, Esq., Fifth Third Bancorp

25 Brian Thomas, Esq., Fifth Third Bancorp

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<p>Page 4</p> <p>1 THE VIDEOGRAPHER: Today is December 20th, 2 2022. The time is 9:39 a.m. We're on the record 3 for the deposition of Gary R. Heminger for a case 4 pending in the United States District Court, 5 Southern District of Ohio, Western Division, 6 entitled Philip R. McHugh, Plaintiff, vs. Fifth 7 Third Bancorp, et al., Defendants, Case No. 8 1:21-cv-00238.</p> <p>9 If at this time all counsel present would 10 introduce themselves for the record, then the 11 witness can be sworn.</p> <p>12 MR. SABA: Peter Saba on behalf of the 13 Plaintiff Philip R. McHugh.</p> <p>14 MR. SMITH: Joshua Smith on behalf of the 15 Plaintiff Philip R. McHugh.</p> <p>16 MR. CIOFFI: Michael Cioffi on behalf of all 17 the defendants. I also represent Mr. Heminger 18 personally pursuant to a written joint 19 representation agreement.</p> <p>20 MR. THOMAS: Brian Thomas with Fifth Third 21 Bank.</p> <p>22 MS. POOLE: Phenise Poole for Fifth Third 23 Bank.</p> <p>24 GARY R. HEMINGER, 25 of lawful age, a witness herein, being first duly sworn</p>	<p>Page 6</p> <p>1 record. Do you understand all those instructions? 2 A. Yes, sir. 3 Q. Could I have your residence address, please? 4 A. My residence is 312 Pheasant Run Place, 5 Findlay, Ohio. 6 Q. How long have you lived there? 7 A. 20 -- 25 years. 8 Q. Who lives there with you? 9 A. My wife, Jane. 10 Q. What's your date of birth? 11 A. 9/10/53. 12 Q. You indicated you've had depositions taken 13 before. Have you ever given trial testimony? 14 A. I have. 15 Q. When is the last time that you gave a 16 deposition? 17 A. Approximately ten years. 18 Q. And what was that for? 19 A. It was a case involving one of the refineries 20 at Marathon Petroleum Company. 21 Q. And with respect to the trial testimony you 22 gave, when was -- when did you give the trial testimony? 23 A. I'm sorry, I didn't hear. What? 24 Q. You indicated that you've also given trial 25 testimony?</p>
<p>Page 5</p> <p>1 as hereinafter certified, was examined and deposed as 2 follows: 3 EXAMINATION 4 BY MR. SABA: 5 Q. Mr. Heminger, can you go ahead and state your 6 name for the record, please, and spell your last name? 7 A. Gary R. Heminger, H-e-m-i-n-g-e-r. 8 Q. Have you ever had your deposition taken 9 before? 10 A. Yes, sir. 11 Q. As a reminder, I'm going to be asking you a 12 series of questions. If there's anything you don't hear 13 or don't understand, please feel free to ask me to 14 repeat or rephrase the question. I think you indicated 15 earlier you may have some problems with hearing so -- 16 A. Right. 17 Q. -- please let me know if you need me to speak 18 up and clarify anything. For the sake of the court 19 reporter, although this is being taken down via video, I 20 do need you to answer verbally. No shaking or nodding 21 of the head or uh-huh or uh-uhs. It's difficult for her 22 to take that down with a written record. 23 Additionally, if you'd wait for me to finish 24 my question before you answer and I'll try and do the 25 same with your answers, it also makes for a clearer</p>	<p>Page 7</p> <p>1 A. Oh, yes. 2 Q. When's the last time you gave trial testimony? 3 A. Probably 20 years ago. The same with Marathon 4 Petroleum Company. 5 Q. What did you do to prepare for today's 6 deposition? 7 A. I met with my counsel. 8 Q. Anything else? 9 A. No, sir. 10 Q. Did you review the deposition of 11 Mr. McCallister? 12 A. I did. 13 MR. CIOFFI: Objection. I'm going to instruct 14 him not to answer. What he reviewed were documents 15 that I instructed him to review. Those 16 instructions are a part of my thought process and 17 work product. So for that reason, I would instruct 18 him not to answer. 19 MR. SABA: I asked a specific question. Did 20 you review the deposition of Mr. McCallister? 21 Whether or not he reviewed it is a specific 22 question. It doesn't go into -- 23 MR. CIOFFI: The identity of the documents is 24 what's privileged because I selected them. You can 25 ask him if he reviewed any documents that I didn't</p>

<p>1 select or that he selected. I'm not going to 2 object to that. The documents I selected, if he 3 reviewed it other than through my selection, you 4 can ask him that. 5 BY MR. SABA: 6 Q. You indicated yes to the previous question 7 about whether or not you reviewed Mr. McCallister's 8 deposition. Is there anything specific with respect to 9 Mr. McCallister's testimony that you disagree with? 10 MR. CIOFFI: Objection. Move to strike his 11 answer, is that he answered it while I was 12 objecting and I'm going to instruct him not to 13 answer. 14 MR. SABA: And what's the basis of the 15 instruction? 16 MR. CIOFFI: Again, it -- it goes to the 17 privilege of the document. 18 BY MR. SABA: 19 Q. Did you speak to Mr. McCallister at all prior 20 to this deposition? 21 A. No. 22 Q. With respect to Mr. McCallister's deposition, 23 did you note anything that you agreed with? 24 MR. CIOFFI: Objection. I'm going to instruct 25 him not to answer about documents that he reviewed</p>	Page 8	<p>1 A. I had made recommendations to the board on 2 various candidates. 3 Q. How many candidates did you recommend to the 4 board? 5 A. We reviewed over -- over the span of preparing 6 for my succession, we reviewed three intensively. 7 Q. What was that span that you referenced? 8 A. Over the last three years. 9 Q. By "the last three years," you mean the last 10 three years prior to your departure? 11 A. Yes, sir. 12 Q. Did Marathon Oil retain any outside agencies 13 to do an independent review or analysis or assessment of 14 the candidates? 15 A. Let me correct you. It's Marathon Petroleum. 16 Q. Marathon Petroleum. 17 A. Okay. Now repeat the question. 18 Q. Certainly. Did Marathon Petroleum retain any 19 outside agency to do a review or assessment of any of 20 the candidates? 21 A. We do. 22 Q. Who did you retain? 23 A. I don't recall the name of the -- of the firm. 24 Q. And did the firm analyze more than one 25 candidate or assess more than one candidate?</p>	Page 10
<p>1 at my request. 2 MR. SABA: And that's going to be a continuing 3 objection? 4 MR. CIOFFI: Yes. Yes, sir. 5 MR. SABA: All right. So we'll just -- we'll 6 note to bring that up with the court at a later 7 time. 8 BY MR. SABA: 9 Q. What's the extent of your education? 10 A. I have a bachelor's degree in accounting from 11 Tiffin University, MBA from University of Dayton. 12 Q. Are you currently employed? 13 A. I'm retired. 14 Q. Where did you retire from? 15 A. I retired from Marathon Petroleum Company in 16 2020. 17 Q. What was your position? 18 A. I was a chairman and CEO. 19 Q. How long had you held the position of chairman 20 and CEO at Marathon Petroleum? 21 A. 11 years. 22 Q. Were you involved in the process to select 23 your replacement? 24 A. I was. 25 Q. What was your involvement?</p>	Page 9	<p>1 A. Yes. 2 Q. How many candidates did the outside firm that 3 Marathon Petroleum retained assess? 4 A. I believe it was two. 5 Q. Who was ultimately selected as your 6 replacement? 7 A. A fellow by the name of Mike Hennigan. 8 Q. Was Mike Hennigan one of the people that you 9 recommended to the board? 10 A. Yes. 11 Q. How many boards do you serve on currently? 12 A. I serve on two public boards, Fifth Third Bank 13 and PPG in Pittsburgh, and I'm on Ohio State 14 University's board as well. 15 Q. How long have you served on the board at Fifth 16 Third Bank? 17 A. I believe 2006 was the year that I joined. 18 Q. And just to be clear, when you say you "served 19 on the board of Fifth Third Bank," you're indicating 20 that you've served on the board of both Fifth Third 21 Bancorp and Fifth Third National Association, correct? 22 A. I don't know the difference there. I'm just 23 aware of it as Fifth Third Bancorp. 24 Q. Okay. You don't have an understanding of one 25 being the holding company for the other?</p>	Page 11

<p>Page 12</p> <p>1 A. I do understand that, yes.</p> <p>2 Q. Okay. What is your understanding?</p> <p>3 A. My understanding is I'm a board member of</p> <p>4 Fifth Third Bancorp.</p> <p>5 Q. You don't know if you're a board member of</p> <p>6 Fifth Third Bank National Association?</p> <p>7 A. I don't.</p> <p>8 Q. How often does the Fifth Third Bank board meet</p> <p>9 a year?</p> <p>10 A. Approximately six or seven times. Our -- you</p> <p>11 know, dates that are already predetermined at the end of</p> <p>12 each quarter, and then we'll have a strategy</p> <p>13 session and -- probably two strategy sessions. So six</p> <p>14 or seven that are determined, and then you may have a</p> <p>15 call now and then.</p> <p>16 Q. And you referenced "a strategy session." Is a</p> <p>17 strategy session different from a board meeting?</p> <p>18 A. No.</p> <p>19 Q. Is that separate and apart from board</p> <p>20 meetings?</p> <p>21 A. No. It's a -- it's a full board meeting.</p> <p>22 Q. So when you count board meetings, you're</p> <p>23 saying you set four or so board meetings a year and then</p> <p>24 a couple strategy sessions?</p> <p>25 MR. CIOFFI: Objection. That was not his</p>	<p>Page 14</p> <p>1 company forward.</p> <p>2 Q. How many board members are there?</p> <p>3 A. I believe there are 12.</p> <p>4 Q. And how many of those board members are</p> <p>5 independent of Fifth Third Bank?</p> <p>6 A. All except the CEO, and currently the outgoing</p> <p>7 CEO is still on the board, but I don't believe he would</p> <p>8 be considered independent yet.</p> <p>9 Q. And that is Mr. Carmichael you're referring to</p> <p>10 as the outgoing CEO?</p> <p>11 A. Yes, sir.</p> <p>12 Q. And the other CEO member that you're referring</p> <p>13 to is Mr. Spence; is that correct?</p> <p>14 A. That's correct.</p> <p>15 Q. What is the board's role with respect to</p> <p>16 executive succession?</p> <p>17 A. I would say that that is the primary role of</p> <p>18 the board, is to be able to learn, observe development,</p> <p>19 observe, you know, the management team, both inside the</p> <p>20 bank and outside the bank for future succession</p> <p>21 planning.</p> <p>22 Q. Do you serve on any committees?</p> <p>23 A. I do.</p> <p>24 Q. Which committees do you serve on?</p> <p>25 A. I chair the finance committee. I serve on the</p>
<p>Page 13</p> <p>1 testimony, but you can ask him.</p> <p>2 BY MR. SABA:</p> <p>3 Q. I'm just trying to understand what you mean by</p> <p>4 which meetings you hold and what they are?</p> <p>5 A. All of them are board meetings, but you meet</p> <p>6 as a board on the quarterly cycle to review financial</p> <p>7 statements and public documents or documents you're</p> <p>8 going to make public. And then we'll have at least one,</p> <p>9 maybe two board meetings that we review the business</p> <p>10 plan, the strategy plan, for the upcoming years, but</p> <p>11 they're all part of the board meeting.</p> <p>12 Q. The meetings where you review the strategy</p> <p>13 plan for the upcoming years, are those held at the same</p> <p>14 time each year?</p> <p>15 A. I believe so.</p> <p>16 Q. When are those held?</p> <p>17 A. We'll have one -- the preliminary review in --</p> <p>18 I believe it's October, and then a final review in</p> <p>19 December.</p> <p>20 Q. And what is your understanding of what the</p> <p>21 duties of the -- of the board members are?</p> <p>22 A. Oh, the duties of a board member are -- are to</p> <p>23 give an independent view, advice and counsel, on the</p> <p>24 business of the Fifth Third Bank and the -- and the</p> <p>25 direction that management is recommending to take the</p>	<p>Page 15</p> <p>1 risk committee and on the human capital compensation</p> <p>2 committee.</p> <p>3 Q. What does the finance committee do?</p> <p>4 A. The finance committee is a committee of all</p> <p>5 the chairs of the different committees, where it serves</p> <p>6 kind of as a quasi executive committee.</p> <p>7 Q. How long have you served on the finance</p> <p>8 committee?</p> <p>9 A. Approximately five years.</p> <p>10 Q. How long have you been the chair?</p> <p>11 A. From the beginning, all five years.</p> <p>12 Q. What does the risk committee do?</p> <p>13 A. The risk committee reviews all of the</p> <p>14 policies, both credit, risk, governmental compliance, so</p> <p>15 anything associated with risk on lending, credit</p> <p>16 allowances, loss allowances, anything to do with risk in</p> <p>17 and around the bank is reviewed by the risk committee.</p> <p>18 Q. How long have you been on the risk committee?</p> <p>19 A. About the last four years.</p> <p>20 Q. And what does the Human Capital Compensation</p> <p>21 Committee do?</p> <p>22 A. We review all of the executive compensation</p> <p>23 and company compensation for the bank, and it is our</p> <p>24 duty to observe and advise and make the final</p> <p>25 recommendations to the board on any compensation for the</p>

<p>Page 16</p> <p>1 executives and management.</p> <p>2 Q. Is the Human Capital Compensation Committee</p> <p>3 also referred as to the HCCC?</p> <p>4 A. Yes, sir.</p> <p>5 Q. What role does the HCCC play in the process of</p> <p>6 executive succession for the president and CEO?</p> <p>7 A. The members of the HCC are joined by the other</p> <p>8 members of the board, and so executive succession for</p> <p>9 the CEO is all done at the board level, not just</p> <p>10 particularly within the HCCC -- HCC, I should say.</p> <p>11 Q. Independent of the board, does the HCCC have</p> <p>12 any part in the process of executive succession for the</p> <p>13 president and CEO?</p> <p>14 MR. CIOFFI: Objection. Asked and answered,</p> <p>15 but you may answer.</p> <p>16 THE WITNESS: Repeat it, independent --</p> <p>17 BY MR. SABA:</p> <p>18 Q. Independent of the board, does the HCCC have</p> <p>19 any role in the executive succession for the president</p> <p>20 and CEO?</p> <p>21 A. No, sir.</p> <p>22 Q. How often do each of those committees meet?</p> <p>23 A. The finance committee will meet -- and let me</p> <p>24 clarify, you want me to talk about each committee I'm</p> <p>25 on?</p>	<p>Page 18</p> <p>1 meetings.</p> <p>2 Q. Other than seeing Philip at the board</p> <p>3 meetings, where else would you see him?</p> <p>4 A. I believe that's it.</p> <p>5 Q. You didn't spend any time with him socially;</p> <p>6 is that correct?</p> <p>7 A. No, sir.</p> <p>8 Q. Did you, outside of the board meetings, did</p> <p>9 you ever observe Philip in the workplace?</p> <p>10 A. No.</p> <p>11 Q. Did -- outside board meetings, did you ever</p> <p>12 meet with Philip at any time to discuss any Fifth Third</p> <p>13 issues?</p> <p>14 A. Not that I recall.</p> <p>15 Q. Did you ever communicate with Phil McHugh by</p> <p>16 phone, by text, by email?</p> <p>17 A. I may have, but not that I recall.</p> <p>18 Q. Did you ever discuss Phil McHugh with any of</p> <p>19 his direct reports or any of his subordinates?</p> <p>20 A. Not that I recall.</p> <p>21 Q. Did you ever discuss Phil McHugh with Greg</p> <p>22 Carmichael? And, again, the period of time I'm</p> <p>23 referring to is prior to January 1, 2020.</p> <p>24 A. Could you repeat that question?</p> <p>25 Q. Sure. Prior to January 1 of 2020, did you</p>
<p>Page 17</p> <p>1 Q. Please.</p> <p>2 A. The finance committee will meet probably six</p> <p>3 times a year. The risk committee meets every board</p> <p>4 meeting and maybe a call -- we will have a separate risk</p> <p>5 committee call with regulatory agencies about twice a</p> <p>6 year. The HCC committee meets I would say five, six</p> <p>7 times a year.</p> <p>8 Q. Is it correct to say that the finance</p> <p>9 committee and risk committee have no involvement in the</p> <p>10 succession planning for president and/or CEO?</p> <p>11 A. At the committee level, that is correct.</p> <p>12 Q. At what level do they have any involvement in</p> <p>13 the succession planning for president and/or CEO?</p> <p>14 A. At the committee level, they do not. The</p> <p>15 board members separately do, but not at the committee</p> <p>16 level.</p> <p>17 Q. And just to clarify that, are you saying the</p> <p>18 board members do as members of the board, but not</p> <p>19 necessarily as members of the finance or risk committee?</p> <p>20 A. That's correct.</p> <p>21 Q. Prior to January 1st, 2020, what was your</p> <p>22 relationship with Philip McHugh?</p> <p>23 A. I've known Philip for all of the years that</p> <p>24 I've been on the board, so it was a professional</p> <p>25 relationship that I would see Philip at the board</p>	<p>Page 19</p> <p>1 ever discuss Phil McHugh with Greg Carmichael?</p> <p>2 A. We would have discussed inside the boardroom,</p> <p>3 but not specifically one-on-one with Greg Carmichael,</p> <p>4 but I would have had discussions inside the boardroom</p> <p>5 where Greg was presenting.</p> <p>6 Q. Prior to January 1 of 2020, do you recall any</p> <p>7 specific discussions in the boardroom about Phil McHugh?</p> <p>8 A. As we, you know, reviewed the development of</p> <p>9 executives, yes, we would have had discussions about</p> <p>10 Mr. McHugh's development, yes.</p> <p>11 Q. What do you recall about those discussions?</p> <p>12 A. I don't -- I really don't recall any of the</p> <p>13 details at this time.</p> <p>14 Q. Do you know what the enterprise committee is?</p> <p>15 A. I do.</p> <p>16 Q. What is the enterprise committee?</p> <p>17 A. The enterprise committee is the members of the</p> <p>18 executive team of the bank.</p> <p>19 Q. Outside the board meetings, did you have any</p> <p>20 discussions with any members of the enterprise committee</p> <p>21 regarding Phil McHugh?</p> <p>22 A. No, sir.</p> <p>23 Q. Outside of any board meetings, did you do any</p> <p>24 of your own independent analysis of Phil McHugh's</p> <p>25 performance with Fifth Third bank?</p>

<p>Page 20</p> <p>1 A. No, sir.</p> <p>2 Q. Was there ever a discussion during any of the</p> <p>3 board meetings of Phil McHugh succeeding Greg Carmichael</p> <p>4 as president and/or CEO of Fifth Third Bank?</p> <p>5 MR. CIOFFI: Objection. Vague. And</p> <p>6 discussions with whom?</p> <p>7 MR. SABA: Let me rephrase the question.</p> <p>8 BY MR. SABA:</p> <p>9 Q. Prior to January 1, 2020, during any board</p> <p>10 meetings, do you recall any discussions about Phil</p> <p>11 McHugh succeeding Greg Carmichael as president and/or</p> <p>12 CEO of Fifth Third Bank?</p> <p>13 MR. CIOFFI: Objection. I didn't hear the</p> <p>14 first part of that. Could you read that back,</p> <p>15 please?</p> <p>16 (The record was read.)</p> <p>17 MR. CIOFFI: Your first question was outside</p> <p>18 the board meeting, but this one is during the board</p> <p>19 meeting.</p> <p>20 MR. SABA: Correct. I rephrased the question.</p> <p>21 MR. CIOFFI: Do you understand the question?</p> <p>22 THE WITNESS: Well, now I'm confused, so</p> <p>23 remind me again.</p> <p>24 MR. SABA: Let me repeat the question.</p> <p>25 THE WITNESS: And excuse me one second. I</p>	<p>Page 22</p> <p>1 A. Isn't that the same question I just answered?</p> <p>2 MR. CIOFFI: I think so, but --</p> <p>3 BY MR. SABA:</p> <p>4 Q. You answered not with respect to replacing</p> <p>5 Greg Carmichael.</p> <p>6 A. Okay.</p> <p>7 Q. So I rephrased the question --</p> <p>8 A. All right.</p> <p>9 Q. -- to remove that characteristic of replacing</p> <p>10 Greg Carmichael to see if there were any discussions,</p> <p>11 separate and apart from replacing Greg Carmichael?</p> <p>12 A. Right.</p> <p>13 Q. Do you understand the question?</p> <p>14 A. I do.</p> <p>15 Q. Okay.</p> <p>16 A. The -- in the board meeting, when we're doing</p> <p>17 succession planning, we review -- it's a continuous</p> <p>18 process that we review candidates. So we would have had</p> <p>19 discussions, you know, not only Mr. McHugh, but other</p> <p>20 candidates as well.</p> <p>21 Q. When you say "candidates," as candidates for</p> <p>22 president and CEO of Fifth Third Bank?</p> <p>23 A. Candidates for potential for any upward</p> <p>24 movement within the enterprise team.</p> <p>25 Q. Were there any specifically with respect to</p>
<p>Page 21</p> <p>1 forgot to turn my phone off. I'm sorry.</p> <p>2 BY MR. SABA:</p> <p>3 Q. Prior to January 1st, 2020, do you recall any</p> <p>4 discussions during any of the board meetings regarding</p> <p>5 Phil McHugh replacing Greg Carmichael as president</p> <p>6 and/or CEO of Fifth Third Bank?</p> <p>7 A. I do not.</p> <p>8 Q. Do you believe that there were any discussions</p> <p>9 of -- regarding Phil McHugh replacing Greg Carmichael as</p> <p>10 president and/or CEO of Fifth Third Bank prior to</p> <p>11 January 1st, 2020 during any of the board meetings?</p> <p>12 A. Not as replacing Greg Carmichael, no.</p> <p>13 Q. What about other than replacing Greg</p> <p>14 Carmichael?</p> <p>15 MR. CIOFFI: Objection, vague. Other</p> <p>16 discussions?</p> <p>17 BY MR. SABA:</p> <p>18 Q. Other discussions of Fifth -- I can rephrase</p> <p>19 the question.</p> <p>20 MR. CIOFFI: Please do.</p> <p>21 BY MR. SABA:</p> <p>22 Q. Prior to January 1, 2020, were there ever any</p> <p>23 discussions during any board meetings regarding Phil</p> <p>24 McHugh becoming president and/or CEO of Fifth Third</p> <p>25 Bank?</p>	<p>Page 23</p> <p>1 Phil McHugh as president and/or CEO of Fifth Third Bank?</p> <p>2 A. Not that I recall.</p> <p>3 Q. Focusing on the period after January 1st,</p> <p>4 2020, was your relationship with Phil McHugh any</p> <p>5 different after that date?</p> <p>6 MR. CIOFFI: Objection. Vague. Different</p> <p>7 than what?</p> <p>8 BY MR. SABA:</p> <p>9 Q. Different than what you indicated prior to</p> <p>10 January 1st, 2020? I'll ask it a different way.</p> <p>11 Describe to me your relationship with Phil</p> <p>12 McHugh after January 1st, 2020?</p> <p>13 A. I don't see my relationship any</p> <p>14 different. It's always been a professional</p> <p>15 relationship.</p> <p>16 Q. Did you have any direct meetings with Phil</p> <p>17 McHugh after January 1st, 2020, outside any board</p> <p>18 meetings?</p> <p>19 A. Not that I recall.</p> <p>20 Q. Did you have any conversations with Phil</p> <p>21 McHugh after January 1st, 2020, outside any board</p> <p>22 meetings?</p> <p>23 MR. CIOFFI: Objection. You just asked that</p> <p>24 question, I think.</p> <p>25 THE WITNESS: Not that I recall.</p>

<p>1 BY MR. SABA:</p> <p>2 Q. Did you have any communication by text, email,</p> <p>3 or telephone with Phil McHugh after January 1st, 2020?</p> <p>4 A. Not that I recall.</p> <p>5 Q. After January 1st, 2020, did you do any</p> <p>6 independent analysis of Phil McHugh's performance at</p> <p>7 Fifth Third Bank?</p> <p>8 MR. CIOFFI: Objection. I didn't get the</p> <p>9 preface. Did you say outside the board meetings?</p> <p>10 MR. SABA: After.</p> <p>11 MR. CIOFFI: Could you read the question back?</p> <p>12 I'm sure it's perfectly fine, but I didn't hear it.</p> <p>13 (The record was read.)</p> <p>14 MR. CIOFFI: Objection. Lack of clarity. Are</p> <p>15 you saying outside the board meetings?</p> <p>16 MR. SABA: In or outside board meetings.</p> <p>17 MR. CIOFFI: Could you -- because that wasn't</p> <p>18 the question. Could you rephrase the question,</p> <p>19 please?</p> <p>20 MR. SABA: Sure.</p> <p>21 BY MR. SABA:</p> <p>22 Q. After January 1st, 2020, did you do any</p> <p>23 independent analysis of Phil McHugh outside any board</p> <p>24 meetings?</p> <p>25 A. No, sir.</p>	<p>Page 24</p> <p>1 relationship with Tim Spence?</p> <p>2 A. A professional relationship as a member of the</p> <p>3 management team of Fifth Third.</p> <p>4 Q. Prior to January 1st, 2020, did you have any</p> <p>5 meetings with Mr. Spence outside any board meetings?</p> <p>6 A. I would have had some phone calls.</p> <p>7 Q. When did you have those phone calls with</p> <p>8 Mr. Spence?</p> <p>9 A. I don't recall.</p> <p>10 Q. Why did you have phone calls with Mr. Spence</p> <p>11 prior to January 1, 2020?</p> <p>12 A. Just, again, as a professional relationship</p> <p>13 for clarification of different things that were</p> <p>14 presented at a board meeting.</p> <p>15 Q. How many phone calls did you have with</p> <p>16 Mr. Spence?</p> <p>17 A. I don't recall.</p> <p>18 Q. More than five?</p> <p>19 A. No.</p> <p>20 Q. Do you recall what year those phone calls</p> <p>21 were?</p> <p>22 A. No.</p> <p>23 Q. Do you recall any of the topics that you</p> <p>24 followed up with him about?</p> <p>25 A. One was to get -- have further information,</p>
<p>Page 25</p> <p>1 Q. After January 1st, 2020, did you meet with any</p> <p>2 of Phil McHugh's direct reports or subordinates to</p> <p>3 discuss Phil McHugh's performance?</p> <p>4 A. No, sir.</p> <p>5 Q. After January 1st, 2020, did you have any</p> <p>6 meetings or conversations with Greg Carmichael to</p> <p>7 discuss Phil McHugh succeeding him as president and/or</p> <p>8 CEO of Fifth Third bank?</p> <p>9 A. Not that I recall.</p> <p>10 Q. Outside of any board meetings, did you have</p> <p>11 any meetings with Greg Carmichael during which you</p> <p>12 discussed Phil McHugh?</p> <p>13 A. Not that I recall.</p> <p>14 Q. After January 1st, 2020, did you have any</p> <p>15 meetings with any members of the enterprise committee,</p> <p>16 other than Greg Carmichael, during which you discussed</p> <p>17 Phil McHugh?</p> <p>18 A. That's --</p> <p>19 Q. It's broad.</p> <p>20 A. That's broad. Run that by my again.</p> <p>21 Q. Sure. After January 1, 2020, did you have any</p> <p>22 meetings with any members of the enterprise committee</p> <p>23 during which you discussed Phil McHugh?</p> <p>24 A. No, sir.</p> <p>25 Q. Prior to January 1st, 2020, what was your</p>	<p>Page 27</p> <p>1 further understanding, I should say, of some of the</p> <p>2 digital platforms that were being considered at the</p> <p>3 bank.</p> <p>4 Q. Do you recall any of the other topics?</p> <p>5 A. I do not.</p> <p>6 Q. Did you ever communicate with Mr. Spence by</p> <p>7 email or text message prior to January 1, 2020?</p> <p>8 A. I don't recall.</p> <p>9 Q. Prior to January 1, 2020, did you have any</p> <p>10 conversations with Mr. Carmichael about Mr. Spence</p> <p>11 succeeding him as president and CEO of Fifth Third Bank?</p> <p>12 MR. CIOFFI: Objection. Are you saying</p> <p>13 outside the board meetings?</p> <p>14 MR. SABA: I'm saying at any time prior to</p> <p>15 January 1, 2020, did you have any conversations</p> <p>16 with Mr. Carmichael about Mr. Spence succeeding him</p> <p>17 as president and/or CEO of Fifth Third Bank?</p> <p>18 MR. CIOFFI: My objection is are you including</p> <p>19 both inside and outside the board meetings in your</p> <p>20 question? That's what is not clear.</p> <p>21 MR. SABA: No, my question is clear. Any</p> <p>22 conversations. So that could be in a board</p> <p>23 meeting, it could be outside a board meeting.</p> <p>24 MR. CIOFFI: Do you understand the question?</p> <p>25 THE WITNESS: I do.</p>

<p>Page 28</p> <p>1 MR. CIOFFI: Please answer.</p> <p>2 THE WITNESS: I would have had conversations</p> <p>3 inside the board meeting.</p> <p>4 BY MR. SABA:</p> <p>5 Q. Did you have any conversations outside the</p> <p>6 board meeting with Mr. Carmichael about Mr. Spence</p> <p>7 succeeding him as president and/or CEO of Fifth Third</p> <p>8 Bank?</p> <p>9 A. Not that I recall.</p> <p>10 Q. During which board meetings did you have</p> <p>11 conversations with Mr. Carmichael about Mr. Spence</p> <p>12 succeeding him as president and CEO of Fifth Third Bank?</p> <p>13 A. I don't recall the actual dates.</p> <p>14 Q. Did you have any conversations with any of the</p> <p>15 other board meetings -- excuse me, let me rephrase that.</p> <p>16 Did you have any conversations with any of the</p> <p>17 other board members, either during a board meeting or</p> <p>18 outside a board meeting, regarding Mr. Spence succeeding</p> <p>19 Mr. Carmichael as president and/or CEO of Fifth Third</p> <p>20 Bank?</p> <p>21 MR. CIOFFI: Objection. Time frame. Ever?</p> <p>22 MR. SABA: I wasn't done with my question.</p> <p>23 MR. CIOFFI: Oh, I thought you were.</p> <p>24 BY MR. SABA:</p> <p>25 Q. This is prior to January 1st, 2020.</p>	<p>Page 30</p> <p>1 MR. SABA: No, I'm clarifying whether he had</p> <p>2 any conversations outside any board meetings.</p> <p>3 THE WITNESS: Not that I recall.</p> <p>4 BY MR. SABA:</p> <p>5 Q. Did you ever observe Mr. Spence in the</p> <p>6 workplace?</p> <p>7 MR. CIOFFI: Objection.</p> <p>8 BY MR. SABA:</p> <p>9 Q. Outside any board meeting?</p> <p>10 A. Run that question by me again.</p> <p>11 Q. Certainly. Prior to January 1, 2020, did you</p> <p>12 ever observe Mr. Spence in the workplace?</p> <p>13 A. In the workplace? Yes.</p> <p>14 Q. When did you observe him in the workplace?</p> <p>15 A. In many presentations at the board meetings.</p> <p>16 Q. Outside any board meetings, did you ever</p> <p>17 observe Mr. Spence in the workplace?</p> <p>18 A. Not that I recall.</p> <p>19 Q. Did you ever meet with any of Mr. Spence's</p> <p>20 subordinates or direct reports regarding Mr. Spence?</p> <p>21 MR. CIOFFI: Objection. Clarity. You</p> <p>22 keep going inside, outside the board meetings.</p> <p>23 Is this ever or inside or outside or what are you</p> <p>24 asking?</p> <p>25 MR. SABA: I can rephrase the question.</p>
<p>Page 29</p> <p>1 MR. CIOFFI: Can you read the question back</p> <p>2 please.</p> <p>3 MR. SABA: Let me repeat the question.</p> <p>4 BY MR. SABA:</p> <p>5 Q. Prior to January 1st, 2020, did you have any</p> <p>6 conversations with any other board members, either</p> <p>7 inside a board meeting or outside a board meeting,</p> <p>8 regarding Mr. Spence succeeding Mr. Carmichael as</p> <p>9 president and/or CEO of Fifth Third Bank?</p> <p>10 A. Yes.</p> <p>11 Q. When were those conversations?</p> <p>12 A. I don't recall the exact dates.</p> <p>13 Q. Who did you have those conversations with?</p> <p>14 A. Well, as part of -- as I mentioned earlier in</p> <p>15 my deposition, its responsibility -- the number one</p> <p>16 responsibility of the board is succession planning, and</p> <p>17 we would have had discussions in executive session of</p> <p>18 the board, you know, a couple times a year.</p> <p>19 Q. Did you have any conversations outside any</p> <p>20 board meetings or executive sessions with any of the</p> <p>21 other board members regarding Mr. Spence succeeding</p> <p>22 Mr. Carmichael as president and/or CEO of Fifth Third</p> <p>23 Bank?</p> <p>24 MR. CIOFFI: Objection. Asked and answered.</p> <p>25 The same question.</p>	<p>Page 31</p> <p>1 BY MR. SABA:</p> <p>2 Q. Prior to January 1, 2020, did you ever have</p> <p>3 any meetings with any of the direct reports or</p> <p>4 subordinates to Mr. Spence outside any board meetings to</p> <p>5 discuss Mr. Spence?</p> <p>6 A. Not that I recall.</p> <p>7 Q. Outside -- excuse me. Prior to January 1,</p> <p>8 2020, outside any board meetings, did you have any</p> <p>9 conversations with any members of the enterprise</p> <p>10 committee regarding Mr. Spence succeeding Mr. Carmichael</p> <p>11 as president and/or CEO of Fifth Third Bank?</p> <p>12 MR. CIOFFI: Objection. Lack of clarity.</p> <p>13 You're asking those questions really fast. Could</p> <p>14 you read it back, please?</p> <p>15 MR. SABA: I can repeat it slower.</p> <p>16 MR. CIOFFI: I couldn't really follow it.</p> <p>17 BY MR. SABA:</p> <p>18 Q. After -- excuse me. Prior to January 1, 2020,</p> <p>19 did you ever have any conversations with any members of</p> <p>20 the enterprise committee outside any board meetings</p> <p>21 regarding Mr. Spence succeeding Mr. Carmichael as</p> <p>22 president and/or CEO of Fifth Third Bank?</p> <p>23 A. Not that I recall.</p> <p>24 Q. You indicated that you first joined the Fifth</p> <p>25 Third board in 2006; is that correct?</p>

<p>1 A. Yes, sir.</p> <p>2 Q. Were you involved in the process of Mr. Kabat</p> <p>3 succeeding Mr. Shaffer's position?</p> <p>4 A. I was not.</p> <p>5 Q. Obviously you were here when Mr. Carmichael</p> <p>6 succeeded Mr. Kabat; is that correct?</p> <p>7 A. That's correct.</p> <p>8 Q. Explain to me what your understanding is of</p> <p>9 the executive succession process at Fifth Third for</p> <p>10 replacing the president and/or CEO?</p> <p>11 A. The process, the executive succession</p> <p>12 planning -- and it's not just the process here at Fifth</p> <p>13 Third, it's the process that I'm very familiar with at</p> <p>14 the company that I ran for many years, Marathon</p> <p>15 Petroleum, it's the same process at PPG -- where we</p> <p>16 evaluate many candidates over a span of time, and so</p> <p>17 it's a continuous process to see how they're developing,</p> <p>18 to see what their strategic vision is, to see what</p> <p>19 their -- I will call it a culture index, how they manage</p> <p>20 people, their leadership skills with people. So we are</p> <p>21 continually evaluating the development of executives</p> <p>22 that might some day be considered for that position.</p> <p>23 Q. What else?</p> <p>24 A. I think I summed it up pretty well.</p> <p>25 Q. With respect to Fifth Third Bank</p>	<p>Page 32</p> <p>1 president and CEO, what is that process at Fifth Third</p> <p>2 Bank?</p> <p>3 A. As we evaluate the -- in this case, a very</p> <p>4 short list, it would not be many. We evaluate internal</p> <p>5 candidates in this case to determine how those possible</p> <p>6 candidates are developing.</p> <p>7 Q. Anything else that goes into selecting the</p> <p>8 president and/or CEO at Fifth Third Bank?</p> <p>9 A. It's very important to understand, as I said,</p> <p>10 the strategic vision of a person, their apparent</p> <p>11 leadership skills, their gravitas with the employees,</p> <p>12 with the outside investment community, and their</p> <p>13 presentation skills, you know, to the board itself.</p> <p>14 Q. And what did the board do to gain that</p> <p>15 understanding of Mr. Spence?</p> <p>16 A. Throughout all of the board meetings that I</p> <p>17 spoke about earlier, including the strategy sessions,</p> <p>18 every meeting, you're being evaluated. Every breakfast,</p> <p>19 lunch, and dinner you're with the board, you're being</p> <p>20 interviewed on how you're developing and how you're</p> <p>21 preparing. So over all of those meetings, we would have</p> <p>22 observed Mr. Spence, observed how he's developing,</p> <p>23 observed his strategic vision, observed his</p> <p>24 interpersonal skills with the enterprise team. You</p> <p>25 always, as a director, you're always observing the</p>
<p>1 specifically -- and we'll focus on the most recent</p> <p>2 transition from Mr. Carmichael to Mr. Spence -- who were</p> <p>3 the many candidates that were evaluated?</p> <p>4 MR. CIOFFI: Objection. Time frame? You are</p> <p>5 talking about the process, so --</p> <p>6 MR. SABA: You said many candidates were</p> <p>7 evaluated. Who were the many candidates that were</p> <p>8 evaluated?</p> <p>9 MR. CIOFFI: Again, time frame. I mean, are</p> <p>10 you talking about from the time Mr. Carmichael</p> <p>11 became CEO?</p> <p>12 MR. SABA: He said they evaluate many</p> <p>13 candidates. I'm asking about with respect to Mr.</p> <p>14 -- locating Mr. Carmichael's replacement, who were</p> <p>15 the many candidates that were considered?</p> <p>16 THE WITNESS: I don't recall that that's what</p> <p>17 I stated. I said in the executive succession</p> <p>18 planning --</p> <p>19 MR. SABA: Right.</p> <p>20 THE WITNESS: -- that can be for many</p> <p>21 different executive enterprise positions, we</p> <p>22 evaluate many candidates over time. Not</p> <p>23 specifically the president and CEO.</p> <p>24 BY MR. SABA:</p> <p>25 Q. My question goes specifically with respect to</p>	<p>Page 33</p> <p>1 executive management team.</p> <p>2 Q. And that's all within the board meetings,</p> <p>3 correct?</p> <p>4 A. Well, within the board meetings, as I said,</p> <p>5 within -- whether you have a breakfast, lunch, or</p> <p>6 dinner, it's all part of the board meeting, but you</p> <p>7 break away from the actual board meeting when you have a</p> <p>8 dinner.</p> <p>9 Q. Outside the board meetings and the breakfast,</p> <p>10 lunch, or dinner, anything else?</p> <p>11 A. No, sir.</p> <p>12 Q. And during what period of time was Mr. Spence</p> <p>13 evaluated as a candidate to replace Mr. Carmichael as</p> <p>14 president and CEO?</p> <p>15 A. Over the last -- I don't recall the exact</p> <p>16 dates, but the last three or four years, the board</p> <p>17 continuously observed and were evaluating Mr. Spence's</p> <p>18 development.</p> <p>19 Q. You referenced a short list of internal</p> <p>20 candidates for president and CEO of Fifth Third Bank to</p> <p>21 replace Mr. Carmichael. Who was on the short list of</p> <p>22 internal candidates?</p> <p>23 MR. CIOFFI: Objection. That misstates his</p> <p>24 testimony, but you may answer.</p> <p>25 THE WITNESS: The CFO, Mr. Tayfun Tazun, would</p>
<p>wendy@raymerreporting.com</p>	<p>Page 34</p> <p>Page 35</p> <p>Raymer Reporting, Inc. (513) 405-2456</p> <p>Page: 11 (32 - 35)</p>

<p>Page 36</p> <p>1 have been evaluated. Mr. McHugh would have been 2 evaluated. Mr. Spence. At one point in time we 3 observed Mr. Anderson, Lars Anderson. Again, the 4 board is continuously observing their development. 5 It doesn't mean that any or all of them were 6 considered to be the president and CEO. We're 7 observing their development to see how they are -- 8 how they're coming along. 9 BY MR. SABA: 10 Q. With respect to Mr. McHugh, during what period 11 of time would he have been on that short list of 12 candidates? 13 MR. CIOFFI: Objection. Asked and answered, 14 but you may answer. 15 THE WITNESS: I would have -- first of all, I 16 said he was on the short list of people we 17 observed. I didn't say he was a short list of -- 18 as a candidate for president and CEO, but a short 19 list of the executives that we are observing and 20 evaluating. 21 BY MR. SABA: 22 Q. Was there a short list of candidates for 23 president and CEO? 24 A. Yes. 25 Q. And who was on that short list of candidates</p>	<p>Page 38</p> <p>1 THE WITNESS: The full board. 2 BY MR. SABA: 3 Q. There's no separate group within the full 4 board? 5 MR. CIOFFI: Objection. Asked and answered. 6 Redundant. Argumentative. You may answer. 7 THE WITNESS: There's no separate group. 8 BY MR. SABA: 9 Q. Why was Mr. Spence the only person on the 10 short list to replace Mr. Carmichael as president and 11 CEO of Fifth Third Bank? 12 MR. CIOFFI: Objection. Mischaracterizes his 13 testimony. You may answer. 14 THE WITNESS: From our observation of members 15 of the management team, we felt that Tim had the -- 16 during his presentations, that he observed, you 17 know, exemplary strategic vision, a tremendous 18 depth and breadth of the digital Fintech platforms, 19 outstanding interpersonal skills, and a passion to 20 really take the bank forward. 21 BY MR. SABA: 22 Q. What do you do to prepare for a Fifth Third 23 board meeting? 24 A. You need to -- I don't hear you when you're 25 talking that way.</p>
<p>Page 37</p> <p>1 for president and CEO to replace Mr. Carmichael? 2 A. Mr. Spence. 3 Q. Anybody else? 4 A. Not that I'm aware of. 5 Q. When was Mr. Spence placed on that short list 6 of candidates to replace Mr. Carmichael as president and 7 CEO? 8 A. I don't recall the exact date. 9 Q. Do you know a time frame? 10 A. Within the last three to four years. 11 Q. Was Mr. McHugh ever on the short list of 12 candidates to become president and CEO of Fifth Third 13 bank? 14 A. Not that I recall. 15 Q. Who creates the short list of candidates for 16 someone to become the next president and CEO of Fifth 17 Third Bank? 18 A. It's an iterative process where executives are 19 reviewed with the board and then within the board 20 meeting, within the succession planning group, it is 21 determined who we are going to further observe as a 22 potential candidate as a successor. 23 Q. You mentioned a succession planning group. 24 What is a succession planning group? 25 MR. CIOFFI: Objection. Asked and answered.</p>	<p>Page 39</p> <p>1 Q. Oh, I'm sorry. Excuse me. What do you do to 2 prepare for a Fifth Third board meeting? 3 A. We receive in advance, depending on the 4 committee, whether it's the finance committee or excuse 5 me, whether it's the audit committee, the HCC committee, 6 the risk committee, the finance committee, we receive in 7 advance all of the materials that are going to be 8 presented at those different committees, and so I read 9 those. The information that is detailed and the agendas 10 that are detailed per committee, and you read and are 11 prepared so that when you get into the board meeting, it 12 all doesn't have to be recited again. 13 Q. Who presides over the board meetings? 14 A. The chairman of the board and the lead 15 director. 16 Q. Chairman would be Mr. Carmichael; is that 17 right? 18 A. At this time, yes. 19 Q. Well, going back for the past several years, 20 he's been presiding over the board meetings, correct? 21 MR. CIOFFI: Objection. Lack of clarity, over 22 several years. You may answer. 23 THE WITNESS: Yes. Marsha Williams was our 24 lead director early in Mr. Carmichael's career. I 25 don't recall, but I don't believe that</p>

<p>Page 40</p> <p>1 Mr. Carmichael was immediately chairman upon</p> <p>2 succeeding Mr. Kabat, but Marsha Williams was our</p> <p>3 lead director and presided over a good number of</p> <p>4 meetings during that period of time.</p> <p>5 BY MR. SABA:</p> <p>6 Q. Mr. Carmichael became CEO in 2015; does that</p> <p>7 sound correct?</p> <p>8 A. Approximately, yes.</p> <p>9 Q. And since that time, he's presided over the</p> <p>10 board meetings; is that correct?</p> <p>11 MR. CIOFFI: Objection. Asked and answered.</p> <p>12 That is not what he said.</p> <p>13 THE WITNESS: I don't recall the exact date</p> <p>14 that Mr. Carmichael was made chairman.</p> <p>15 BY MR. SABA:</p> <p>16 Q. Let me represent to you that it was</p> <p>17 November 1st, 2015. Since that time, has Mr. Carmichael</p> <p>18 presided over the board meetings?</p> <p>19 MR. CIOFFI: Objection. Counsel's testifying.</p> <p>20 The witness answered the question. He doesn't</p> <p>21 know.</p> <p>22 THE WITNESS: I don't know the exact date.</p> <p>23 BY MR. SABA:</p> <p>24 Q. Since Mr. Carmichael has become CEO, has he</p> <p>25 presided over the board meetings?</p>	<p>Page 42</p> <p>1 the lead director will review the agenda for the full</p> <p>2 board with the chairman.</p> <p>3 Q. And who determines who the presenters or</p> <p>4 speakers will be at each board meeting?</p> <p>5 A. It will be the management team, but usually</p> <p>6 the CEO.</p> <p>7 MR. SABA: If we can go off the record.</p> <p>8 THE VIDEOGRAPHER: The time is 10:35 a.m.</p> <p>9 We're going off the record.</p> <p>10 (A recess was taken from 10:36 a.m. to</p> <p>11 11:01 a.m.)</p> <p>12 THE VIDEOGRAPHER: The time is 11:01. We are</p> <p>13 back on the record.</p> <p>14 BY MR. SABA:</p> <p>15 Q. Mr. Heminger, how much are you paid for being</p> <p>16 a member of the board at Fifth Third?</p> <p>17 A. Approximately \$300,000, half in cash and half</p> <p>18 in stock.</p> <p>19 Q. And do you receive additional funds for being</p> <p>20 on the committees?</p> <p>21 A. No, sir.</p> <p>22 Q. What about for being a -- the chair of a</p> <p>23 committee?</p> <p>24 A. You get an additional fee as the chair of a</p> <p>25 committee, yes.</p>
<p>Page 41</p> <p>1 MR. CIOFFI: Objection. Asked and answered.</p> <p>2 Argumentative. Redundant.</p> <p>3 THE WITNESS: The CEO does not preside over</p> <p>4 the board meetings.</p> <p>5 BY MR. SABA:</p> <p>6 Q. Excuse me. Since Mr. Carmichael has become</p> <p>7 chairman of the board, he has presided over the board</p> <p>8 meetings; is that correct?</p> <p>9 A. Since he became chairman, that's correct.</p> <p>10 Q. Thank you. How and when are the</p> <p>11 documents provided to the board members for the</p> <p>12 board meetings?</p> <p>13 A. Usually a week, maybe up to two weeks in</p> <p>14 advance of the board meeting via a system called</p> <p>15 Diligent. They are downloaded and --</p> <p>16 Q. The Diligent board's portal; is that what that</p> <p>17 is?</p> <p>18 A. Yes, sir.</p> <p>19 Q. And who provides those documents for the board</p> <p>20 meetings?</p> <p>21 A. They come from the secretary's office, the</p> <p>22 legal office of Fifth Third.</p> <p>23 Q. Who sets the agenda for each board meeting?</p> <p>24 A. The agenda is discussed with the chair of each</p> <p>25 committee, reviews their committee information, and then</p>	<p>Page 43</p> <p>1 Q. How much is that?</p> <p>2 A. I believe -- I believe it's about 35,000 -- 35</p> <p>3 to \$40,000 to be the chair of the finance committee.</p> <p>4 Q. Did Mr. Carmichael ever recommend to the board</p> <p>5 that Mr. Spence replace him as president and/or CEO of</p> <p>6 Fifth Third?</p> <p>7 MR. CIOFFI: Objection. Time frame?</p> <p>8 MR. SABA: Any time.</p> <p>9 THE WITNESS: In our last meeting, it was a</p> <p>10 collective -- it was a recommendation from Greg,</p> <p>11 but it was a decision in the executive session of</p> <p>12 the board where we made the decision.</p> <p>13 BY MR. SABA:</p> <p>14 Q. By the last meeting, what are you referring</p> <p>15 to, "the last meeting"?</p> <p>16 A. Whatever meeting it was where we made the</p> <p>17 decision on Tim Spence.</p> <p>18 Q. And are you referring to the decision for Tim</p> <p>19 Spence to become president or the decision for Tim</p> <p>20 Spence to become CEO?</p> <p>21 A. I was referring to when he became CEO.</p> <p>22 Q. Did Mr. Carmichael ever make a recommendation</p> <p>23 with respect to Mr. Spence becoming president to the</p> <p>24 board?</p> <p>25 A. There would have been a recommendation back</p>

<p>1 when we made Mr. Spence president, yes, there would have 2 been a recommendation by Mr. Carmichael that we consider 3 him. 4 Q. Do you recall when that recommendation was 5 made? 6 A. I don't recall the exact date. 7 Q. Did he make that recommendation -- did 8 Mr. Carmichael make that recommendation at more than one 9 board meeting? 10 A. Not that I recall. 11 Q. Do you recall if the recommendation made by 12 Mr. Carmichael was during a regular portion of the board 13 meeting or during an executive session? 14 A. The recommendation had been made during an 15 executive session of the board. 16 Q. Are minutes taken of executive sessions? 17 A. I believe so. 18 Q. Who is responsible for taking the minutes 19 during an executive session of the board? 20 A. I don't know. 21 Q. Have you ever seen minutes from an executive 22 session of the board? 23 A. I've seen minutes of the entire board meeting, 24 and I think that they are inclusive of executive 25 session.</p>	<p>Page 44</p> <p>1 (Plaintiff's Exhibit 1 is marked for 2 identification.) 3 BY MR. SABA: 4 Q. Mr. Heminger, I've handed you what's been 5 marked as Exhibit Number 1. Can you identify that for 6 me, please? 7 A. Fifth Third Bancorp Minutes of the Meeting of 8 the Board of Directors February 28, 2019. 9 Q. And if you look down at the bottom right-hand 10 corner of that document, it has what we call a Bates 11 stamp. Do you see where it says Fifth Third McHugh 12 212471? 13 A. Yes. 14 Q. Do you see that number there? And if you page 15 through, it goes through to 212474; is that correct? 16 A. Yes. 17 Q. Have you seen this document before, 18 Mr. Heminger? 19 A. I would have seen the minutes before, yes. 20 Q. And as you indicated, this was for the meeting 21 that took place on February the 26th, 2019; is that 22 correct? 23 A. Yes. I'm sorry, I said earlier February 28. 24 It's hard to read, but it is February 26. 25 Q. And you were present at that meeting, correct?</p> <p>Page 46</p>
<p>1 Q. You think the board minutes include minutes of 2 what takes place in the executive session? 3 A. I think, but I'm not sure. 4 Q. You'd agree, from a practical standpoint, 5 the -- you would want a record of what happened during 6 the executive session so you all know what you did 7 during the prior executive session, correct? 8 MR. CIOFFI: Objection to the form. Counsel 9 is testifying. Do you have a question or do you 10 want him to agree with your testimony? 11 MR. SABA: That was my question. 12 MR. CIOFFI: Your testimony was your question. 13 BY MR. SABA: 14 Q. Do you understand the question, Mr. Heminger? 15 Do you understand the question? 16 A. Run it by me again, please. 17 Q. From a practical standpoint, wouldn't you want 18 a record of what happened during an executive session so 19 you would know what you all decided during the executive 20 session? 21 A. Yes. 22 Q. Did Mr. Carmichael ever recommend to the board 23 that Mr. McHugh should succeed him as president and/or 24 CEO? 25 A. Not that I recall.</p> <p>Page 45</p>	<p>Page 47</p> <p>1 A. Yes. 2 Q. And if we look down, Mr. Carmichael presided 3 over this meeting; is that correct? 4 A. Yes. 5 Q. You would agree, Mr. Heminger -- actually, let 6 me rephrase the question. Does this appear to you to be 7 a full set of the minutes from the February 26, 2019 8 board meeting for Fifth Third Bancorp? 9 A. I can't determine if it's a full set or not. 10 Q. Based upon Exhibit 1, are you able to tell me 11 whether or not there was any discussion of succession 12 timelines and candidates for the position of president 13 during the February 26, 2019 board meeting? 14 MR. CIOFFI: Objection. The document speaks 15 for itself, but if you have -- 16 MR. SABA: Go ahead. 17 MR. CIOFFI: -- an answer, go ahead and answer 18 it. 19 THE WITNESS: Rephrase the question, please. 20 I have to look at the minutes. 21 BY MR. SABA: 22 Q. Sure. Based upon Exhibit Number 1? 23 A. Uh-huh. 24 Q. Are you able to tell me whether or not there 25 was any discussion of succession timelines and</p>

<p>1 candidates for the position of president during the 2 February 26, 2019 board meeting?</p> <p>3 MR. CIOFFI: Counsel, do you have a section of 4 this you want to direct his attention to rather 5 than have him read the whole thing or --</p> <p>6 MR. SABA: No. My question speaks for itself.</p> <p>7 MR. CIOFFI: So does the document. Whether he 8 points it out right now doesn't matter, but go 9 ahead. You may answer if you have one.</p> <p>10 THE WITNESS: I do not see anything in this 11 document, no.</p> <p>12 BY MR. SABA:</p> <p>13 Q. As you sit here today, can you tell me whether 14 or not there were any discussions during the 15 February 26, 2019 board meeting, regarding the 16 succession timelines and candidates for the position of 17 president?</p> <p>18 A. I do not recall.</p> <p>19 Q. What would you need in order to determine 20 whether or not there were any discussions during the 21 February 26, 2019 board meeting regarding the succession 22 timelines and candidates for the position of president?</p> <p>23 MR. CIOFFI: Objection to the form of the 24 question. It's vague. You mean out --</p> <p>25 MR. SABA: Go ahead, Mr. Heminger.</p>	Page 48	<p>1 A. Correct.</p> <p>2 Q. We don't have a page number there, but when 3 you turn the page, the next page, Fifth Third McHugh 4 212472 has a page number 15; do you see that?</p> <p>5 A. I do.</p> <p>6 Q. Which would appear to indicate that there is 7 at least 13 pages missing; is that correct?</p> <p>8 A. According to this numbering sequence, yes.</p> <p>9 Q. If you had the full set of board minutes for 10 February 26, 2019, would you be able to tell us whether 11 or not there was a discussion regarding succession 12 timelines and candidates for the position of president 13 during that meeting?</p> <p>14 MR. CIOFFI: Objection to the form.</p> <p>15 THE WITNESS: I don't know. I can't observe 16 anything from -- other than what you've put in 17 front of me.</p> <p>18 BY MR. SABA:</p> <p>19 Q. Based upon Exhibit 1, can you tell me everyone 20 who made a presentation at the February 26, 2019 board 21 meeting for Fifth Third Bancorp?</p> <p>22 A. I can't tell you everyone, no.</p> <p>23 Q. If you had a full set of the minutes for the 24 board of directors meeting for Fifth Third Bancorp for 25 February 26, 2019, would you be able to tell me everyone</p>
<p>1 MR. CIOFFI: Other than total recall, I mean, 2 he said he just didn't recall. So do you have 3 something to refresh his memory?</p> <p>4 BY MR. SABA:</p> <p>5 Q. Do you understand my question?</p> <p>6 A. I do.</p> <p>7 Q. What is your answer?</p> <p>8 A. I -- I don't see anything in this document 9 that makes me recall if there was any discussion or not.</p> <p>10 Q. You would agree with me that this document -- 11 let me represent to you this is what was produced by 12 Fifth Third's counsel with respect to the minutes of the 13 meeting of the board of directors for Fifth Third 14 Bancorp on February 26, 2019, that there would appear to 15 be several pages missing. Recognizing it goes from the 16 first page to page 15.</p> <p>17 MR. CIOFFI: Objection to the form of the 18 question. Are you asking him to agree with you?</p> <p>19 THE WITNESS: I --</p> <p>20 BY MR. SABA:</p> <p>21 Q. You indicated before you couldn't tell if this 22 was a full set of the minutes or not; is that right?</p> <p>23 A. That's what I said, yes.</p> <p>24 Q. If you look at the first page, Fifth Third 25 McHugh 212471?</p>	Page 49	<p>1 who made a presentation at that meeting?</p> <p>2 A. I believe --</p> <p>3 MR. CIOFFI: Objection to the form. You're 4 asking him to speculate on what might or might not 5 be in the minutes and whether those presentations 6 were recorded, but you may answer. Go ahead.</p> <p>7 THE WITNESS: I believe I could.</p> <p>8 MR. SABA: We'll make a note at this point as 9 we proceed, Michael. Obviously we've made a 10 request for the full set of minutes which haven't 11 been provided, but we will have to continue this 12 deposition in progress for additional questions 13 regarding the full sets of minutes.</p> <p>14 MR. CIOFFI: Again, like the deposition of 15 Mr. McCallister, I recognize you're trying to keep 16 the deposition open and preserving whatever rights 17 you may have. I don't agree that you have any 18 rights. We've produced every page of the minutes 19 that are arguably relevant in this case, but -- so 20 there's no need to keep it open because you have 21 more than what's relevant and what is responsive to 22 Civil Rule 26, but I recognize you're trying to 23 preserve whatever rights you believe you have. 24 (Plaintiff's Exhibit 2 is marked for 25 identification.)</p>

<p>Page 52</p> <p>1 BY MR. SABA:</p> <p>2 Q. Mr. Heminger, I've handed you what has been</p> <p>3 marked as Exhibit Number 2. Can you identify that for</p> <p>4 me, please?</p> <p>5 A. Yes. Fifth Third Bank Minutes of the Meeting</p> <p>6 of the Board of Directors February 26, 2019.</p> <p>7 Q. And do you recognize that this is a separate</p> <p>8 set of minutes for Fifth Third Bank as opposed to Fifth</p> <p>9 Third Bancorp?</p> <p>10 A. Yes.</p> <p>11 Q. Does this clarify your understanding that</p> <p>12 you're actually on the board of directors for both Fifth</p> <p>13 Third Bank and Fifth Third Bancorp?</p> <p>14 A. Yes.</p> <p>15 Q. And is it fair to say that these meetings are</p> <p>16 held simultaneously both beginning at the same time?</p> <p>17 A. I believe that is correct.</p> <p>18 Q. Essentially they're joint meetings of both</p> <p>19 board of directors?</p> <p>20 A. Yes.</p> <p>21 Q. You serve both roles simultaneously, correct?</p> <p>22 A. Yes.</p> <p>23 Q. And, again, referring to the Bates stamps at</p> <p>24 the bottom of Exhibit Number 2, this is marked Fifth</p> <p>25 Third McHugh 212475 through McHugh 212479; is that</p>	<p>Page 54</p> <p>1 Q. Can you tell me who all the presenters were?</p> <p>2 A. During the strategy update, it was Mr. Spence</p> <p>3 and Mr. Carmichael, Mr. Anderson, Mr. Tazun,</p> <p>4 Mr. Leonard.</p> <p>5 Q. Anyone else?</p> <p>6 A. Hang on. That's all I can see from what</p> <p>7 you've given me.</p> <p>8 Q. So going back to my earlier question, are you</p> <p>9 able to identify every presenter?</p> <p>10 A. I'm sorry?</p> <p>11 Q. Are you able to identify everyone who made a</p> <p>12 presentation at the February 26, 2019 board meeting of</p> <p>13 Fifth Third Bank, based upon Exhibit 2?</p> <p>14 MR. CIOFFI: Objection to the form. It seems</p> <p>15 that there are others besides what he answered, but</p> <p>16 you may answer.</p> <p>17 THE WITNESS: I answered on -- based on what</p> <p>18 you gave me, I answered who appears to have been</p> <p>19 the presenters.</p> <p>20 BY MR. SABA:</p> <p>21 Q. And my question is, are you able to identify</p> <p>22 everyone who presented during that board meeting?</p> <p>23 A. No.</p> <p>24 MR. CIOFFI: Objection. Argumentative.</p> <p>25 Assumes facts not before the witness.</p>
<p>Page 53</p> <p>1 correct?</p> <p>2 A. That's correct.</p> <p>3 Q. If you could look through Exhibit Number 2,</p> <p>4 Mr. Heminger, are you able to tell me whether or not</p> <p>5 this is a complete set of the minutes -- of the board</p> <p>6 minutes for Fifth Third Bank for February 26, 2019?</p> <p>7 A. No, I'm not.</p> <p>8 Q. Making the same reference as before, the --</p> <p>9 you'll see that the first page goes from having no page</p> <p>10 mark on it 212475, but the second page, Fifth Third</p> <p>11 McHugh 212476, is marked as page 21; do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. So it would appear that there is at least 19</p> <p>14 pages missing between there; is that correct?</p> <p>15 A. It appears.</p> <p>16 Q. Based upon your review of these minutes, are</p> <p>17 you able to tell me whether or not there was any</p> <p>18 discussion of succession timelines and candidates for</p> <p>19 the position of president during the February 26, 2019</p> <p>20 board meeting for Fifth Third Bank?</p> <p>21 A. I do not see anything in these minutes, no.</p> <p>22 Q. Based upon Exhibit 2, are you able to tell me</p> <p>23 who the presenters were during the February 26, 2019</p> <p>24 board meeting for Fifth Third Bank?</p> <p>25 A. In some cases, yes.</p>	<p>Page 55</p> <p>1 (Plaintiff's Exhibit 3 is marked for</p> <p>2 identification.)</p> <p>3 BY MR. SABA:</p> <p>4 Q. Mr. Heminger, I have handed you what has been</p> <p>5 marked as Exhibit Number 3. Can you identify that for</p> <p>6 me, please?</p> <p>7 A. Fifth Third Bancorp Minutes of Meeting of the</p> <p>8 Board of Directors February 26, 2019.</p> <p>9 Q. And, sir, if you compare this to Exhibit 1,</p> <p>10 which is also Fifth Third Bancorp Minutes of Meeting of</p> <p>11 the Board of Directors February 26, 2019, if I can first</p> <p>12 refer you to the Bates stamp numbers on Exhibit 3, those</p> <p>13 are marked Fifth Third McHugh 212771; is that correct?</p> <p>14 A. Yes.</p> <p>15 Q. And they run through 212774; is that correct?</p> <p>16 A. Yes.</p> <p>17 Q. Which you agree are different than the Bates</p> <p>18 stamp numbers on Exhibit 1 for the same set of minutes;</p> <p>19 is that correct?</p> <p>20 MR. CIOFFI: Objection. The documents speak</p> <p>21 for themselves.</p> <p>22 BY MR. SABA:</p> <p>23 Q. Do you agree with that, sir, Exhibit 1 and</p> <p>24 Exhibit 3 have different Bates stamp numbers; is that</p> <p>25 correct?</p>

<p>Page 56</p> <p>1 A. That's correct.</p> <p>2 Q. And they are both listed as Fifth Third</p> <p>3 Bancorp minutes for the same day. Do you know if one is</p> <p>4 a draft set of minutes?</p> <p>5 A. I don't know.</p> <p>6 Q. Do you know if either one is the final set of</p> <p>7 minutes that was approved by the board?</p> <p>8 A. I don't.</p> <p>9 Q. What would you need to see in order to</p> <p>10 determine whether or not the minutes were a final set of</p> <p>11 minutes approved by the board?</p> <p>12 A. I would need to see the record that is held</p> <p>13 with the corporate secretary.</p> <p>14 Q. Comparing Exhibit 1 to Exhibit Number 3,</p> <p>15 Mr. Heminger, the first paragraph under executive</p> <p>16 session with CEO, under Exhibit Number 3, has been</p> <p>17 blacked out. Whereas under Exhibit Number 1 under</p> <p>18 executive session with CEO, that paragraph has not been</p> <p>19 blacked out. My question is, is there any additional</p> <p>20 information that you can recall that occurred during</p> <p>21 that executive session that is not disclosed under</p> <p>22 Exhibit Number 1?</p> <p>23 A. Not that I recall.</p> <p>24 (Plaintiff's Exhibit 4 is marked for</p> <p>25 identification.)</p>	<p>Page 58</p> <p>1 Q. Were there any other presenters?</p> <p>2 A. Not that I read here.</p> <p>3 Q. Based on Exhibit 4, are you able to tell me</p> <p>4 the complete list of presenters at the April 16, 2019</p> <p>5 meeting?</p> <p>6 A. No.</p> <p>7 Q. And just to be clear, you did attend that</p> <p>8 meeting; is that correct?</p> <p>9 A. Yes.</p> <p>10 Q. And Mr. Carmichael presided over that meeting;</p> <p>11 is that correct?</p> <p>12 A. Yes.</p> <p>13 Q. During that April 16, 2019 meeting, was there</p> <p>14 also a simultaneous meeting for Fifth Third Bank Board</p> <p>15 of Directors?</p> <p>16 A. I don't know.</p> <p>17 Q. Is it fair to say that if there was a board of</p> <p>18 directors meeting for Fifth Third Bank on April 16th,</p> <p>19 2019, that there would also be a set of minutes for that</p> <p>20 meeting?</p> <p>21 A. Yes.</p> <p>22 (Plaintiff's Exhibit 5 is marked for</p> <p>23 identification.)</p> <p>24 THE WITNESS: That is an extra.</p> <p>25 MR. SABA: Thank you.</p>
<p>Page 57</p> <p>1 BY MR. SABA:</p> <p>2 Q. Mr. Heminger, I have handed you what has been</p> <p>3 marked as Exhibit Number 4. Can you identify that for</p> <p>4 me, please?</p> <p>5 A. Fifth Third Bancorp Minutes of Meeting of the</p> <p>6 Board of Directors April 16, 2019.</p> <p>7 Q. Have you seen this document before?</p> <p>8 A. I don't recall.</p> <p>9 Q. You would agree with me this document is Bates</p> <p>10 stamped at the bottom Fifth Third McHugh 212480 through</p> <p>11 212481; is that correct?</p> <p>12 A. Yes.</p> <p>13 Q. Do you recall if the Fifth Third Bancorp board</p> <p>14 meeting minutes for April 16, 2019 were more than two</p> <p>15 pages?</p> <p>16 A. I don't recall.</p> <p>17 Q. Based upon Exhibit 4, are you able to tell</p> <p>18 whether or not there was any discussion of succession</p> <p>19 timelines of candidates for the position of president</p> <p>20 during the April 16, 2019 meeting?</p> <p>21 A. I cannot -- I cannot determine that, no.</p> <p>22 Q. Based upon Exhibit 4, are you able to tell me</p> <p>23 who the presenters were at the April 16, 2019 board</p> <p>24 meeting for Fifth Third Bancorp?</p> <p>25 A. Mr. Carmichael and Ms. Somalya.</p>	<p>Page 59</p> <p>1 BY MR. SABA:</p> <p>2 Q. Mr. Heminger, I've handed you what has been</p> <p>3 marked as Exhibit 5. Can you identify that for me,</p> <p>4 please?</p> <p>5 A. Fifth Third Bancorp Minutes of Meeting of the</p> <p>6 Board of Directors, June 18, 2019.</p> <p>7 Q. And do you agree with me that Exhibit Number 5</p> <p>8 is Bates stamped Fifth Third McHugh 212487 through Fifth</p> <p>9 Third McHugh 212489?</p> <p>10 A. Yes.</p> <p>11 Q. If you can just let me finish before you</p> <p>12 answer.</p> <p>13 Do you agree with that, sir?</p> <p>14 A. Repeat it.</p> <p>15 Q. Do you agree with me that Exhibit Number 5 is</p> <p>16 Bates stamped Fifth Third McHugh 212487 through Fifth</p> <p>17 Third McHugh 212489?</p> <p>18 A. Yes.</p> <p>19 Q. And to be clear, you were present for that</p> <p>20 board meeting; is that correct?</p> <p>21 A. Yes.</p> <p>22 Q. And Mr. Carmichael presided over that board</p> <p>23 meeting; is that correct?</p> <p>24 A. Yes.</p> <p>25 Q. Based upon Exhibit Number 5, are you able to</p>

<p>Page 60</p> <p>1 tell me whether or not there was any discussion of</p> <p>2 succession timelines and candidates for the position of</p> <p>3 president during the June 18, 2019 board meeting for</p> <p>4 Fifth Third Bancorp?</p> <p>5 A. No, I cannot.</p> <p>6 Q. Based upon Exhibit Number 5, are you able to</p> <p>7 identify for me all of the presenters at the June 18,</p> <p>8 2019 board meeting for Fifth Third Bancorp?</p> <p>9 A. Mr. Carmichael, Mr. Spence, Mr. Anderson,</p> <p>10 Mr. Tazun.</p> <p>11 Q. Are those all the people that presented during</p> <p>12 the June 18, 2019 board meeting for Fifth Third Bancorp?</p> <p>13 A. I don't know.</p> <p>14 (Plaintiff's Exhibit 6 is marked for</p> <p>15 identification.)</p> <p>16 BY MR. SABA:</p> <p>17 Q. Mr. Heminger, I've handed you what's been</p> <p>18 marked as Exhibit Number 6. Can you identify that for</p> <p>19 me, please?</p> <p>20 A. Fifth Third Bank Minutes of Meeting of the</p> <p>21 Board of Directors, June 18, 2019.</p> <p>22 Q. Do you agree, sir, that Exhibit 6 is Bates</p> <p>23 stamped Fifth Third McHugh 212490 through Fifth Third</p> <p>24 McHugh 212501?</p> <p>25 A. That's correct.</p>	<p>Page 62</p> <p>1 who all of the presenters were at the June 18, 2019</p> <p>2 board meeting for Fifth Third Bank?</p> <p>3 A. Mr. Carmichael, Mr. Tazun, Mr. -- Mr. Spence,</p> <p>4 Mr. Schramm. That's all I can tell.</p> <p>5 Q. Are you able to tell me whether or not those</p> <p>6 were all of the presenters at the June 18, 2019 board</p> <p>7 meeting for Fifth Third Bank?</p> <p>8 A. No.</p> <p>9 (Plaintiff's Exhibit 7 is marked for</p> <p>10 identification.)</p> <p>11 BY MR. SABA:</p> <p>12 Q. Mr. Heminger, I have handed you what's been</p> <p>13 marked as Exhibit Number 7. Can you identify that for</p> <p>14 me, please?</p> <p>15 A. Fifth Third Bancorp Minutes of Joint Meeting</p> <p>16 of the Board of Directors, September 16, 2019.</p> <p>17 Q. And you were present for that meeting; is that</p> <p>18 correct?</p> <p>19 A. Yes.</p> <p>20 Q. And Mr. Carmichael presided over that meeting;</p> <p>21 is that right?</p> <p>22 A. Yes.</p> <p>23 Q. You would agree with me that Exhibit 7 is</p> <p>24 Bates stamped Fifth Third McHugh 212502 through 212506;</p> <p>25 is that correct?</p>
<p>Page 61</p> <p>1 Q. Based upon Exhibit -- excuse me, let me go</p> <p>2 back again, sir.</p> <p>3 Again, this was a meeting that was held</p> <p>4 simultaneous with the board meeting for Fifth Third</p> <p>5 Bancorp on June 18, 2019; is that correct?</p> <p>6 A. That's correct.</p> <p>7 Q. As you previously indicated, you were in</p> <p>8 attendance for that meeting; is that right?</p> <p>9 A. That's correct.</p> <p>10 Q. And Mr. Carmichael presided over that meeting;</p> <p>11 is that correct?</p> <p>12 A. Yes.</p> <p>13 Q. Based upon Exhibit 6, are you able to tell me</p> <p>14 whether or not there was any discussion of succession</p> <p>15 timelines and candidates for the position of president</p> <p>16 during the June 18, 2019 board meeting for Fifth Third</p> <p>17 Bank?</p> <p>18 A. I cannot tell.</p> <p>19 Q. As you sit here today, do you recall whether</p> <p>20 or not there was a discussion regarding succession</p> <p>21 timelines and candidates for the position of president</p> <p>22 during the June 18, 2019 board meeting for Fifth Third</p> <p>23 Bank?</p> <p>24 A. I do not recall.</p> <p>25 Q. Based upon Exhibit 6, are you able to tell me</p>	<p>Page 63</p> <p>1 A. Yes.</p> <p>2 Q. Based upon Exhibit Number 7, are you able to</p> <p>3 tell me whether or not there was any discussion</p> <p>4 regarding succession timelines and candidates for the</p> <p>5 position of president during the board meeting on</p> <p>6 September 16, 2019?</p> <p>7 A. I do not see any.</p> <p>8 Q. Based upon Exhibit Number 7, are you able to</p> <p>9 identify for me all of the presenters during the</p> <p>10 September 16, 2019 board meeting for Fifth Third</p> <p>11 Bancorp?</p> <p>12 A. Mr. Carmichael, Mr. Tazun, Mr. Leonard,</p> <p>13 Mr. Anderson, Mr. McHugh, Mr. Spence. That's it.</p> <p>14 Q. Are those all the people that presented during</p> <p>15 that time?</p> <p>16 A. I don't recall.</p> <p>17 Q. Independent of Exhibit Number 7, do you recall</p> <p>18 whether or not there was a discussion of succession</p> <p>19 timelines and candidates for the position of president</p> <p>20 during the September 16, 2019 meeting of the board of</p> <p>21 directors for Fifth Third Bancorp?</p> <p>22 A. I don't recall.</p> <p>23 Q. Independent of Exhibit Number 7, do you recall</p> <p>24 who all the presenters were during the September 16,</p> <p>25 2019 meeting of the board of directors for Fifth Third</p>

<p>1 Bancorp?</p> <p>2 A. I do not recall.</p> <p>3 (Plaintiff's Exhibit 8 is marked for</p> <p>4 identification.)</p> <p>5 BY MR. SABA:</p> <p>6 Q. Mr. Heminger, I've handed you what has been</p> <p>7 marked as Exhibit Number 8. Can you identify that for</p> <p>8 me, please?</p> <p>9 A. Fifth Third Bank Minutes of Meeting of the</p> <p>10 Board of Directors, September 16, 2019.</p> <p>11 Q. And Exhibit 8 is Bates stamped Fifth Third</p> <p>12 McHugh 212507 through McHugh 212512; is that correct?</p> <p>13 A. Yes, sir.</p> <p>14 Q. And briefly, sir, explain to me the process by</p> <p>15 which the minutes are created and approved?</p> <p>16 MR. CIOFFI: Objection to the form. Lack of</p> <p>17 foundation. If you know, you can answer.</p> <p>18 THE WITNESS: I'm sorry, what did you say at</p> <p>19 the end?</p> <p>20 MR. CIOFFI: If you know. If you have some</p> <p>21 knowledge about how it was created, you can answer.</p> <p>22 THE WITNESS: I know that they are -- the</p> <p>23 minutes are taken by the corporate secretary, and</p> <p>24 it's the corporate secretary's office then that</p> <p>25 assembles the minutes and sends them out to the</p>	<p>Page 64</p> <p>1 (Plaintiff's Exhibit 9 is marked for</p> <p>2 identification.)</p> <p>3 BY MR. SABA:</p> <p>4 Q. Mr. Heminger, I've handed you what's been</p> <p>5 marked as Exhibit Number 9. Are you able to identify</p> <p>6 that for me?</p> <p>7 A. It's a document to be utilized for the human</p> <p>8 capital executive talent management and succession plan</p> <p>9 updates discussion on December 17, 2019.</p> <p>10 Q. You'd agree with me that Exhibit Number 9 is</p> <p>11 Bates stamped Fifth Third McHugh 001104 through 001154;</p> <p>12 is that correct?</p> <p>13 A. Yes.</p> <p>14 Q. The first page is an email; is that correct?</p> <p>15 A. That's correct.</p> <p>16 Q. And you're one of the recipients of that</p> <p>17 email; is that right?</p> <p>18 A. Yes.</p> <p>19 Q. And this would be an email to the entire</p> <p>20 board; is that correct?</p> <p>21 A. Yes.</p> <p>22 Q. And the email is from Bob Shaffer; is that</p> <p>23 right?</p> <p>24 A. That is correct.</p> <p>25 Q. And in the email where he references,</p>
<p>1 board after their completion.</p> <p>2 BY MR. SABA:</p> <p>3 Q. And does the board vote on and approve the</p> <p>4 minutes?</p> <p>5 A. That's correct.</p> <p>6 Q. And when does that typically occur?</p> <p>7 A. At the next meeting of the board of directors.</p> <p>8 Q. Based upon Exhibit Number 8, are you able to</p> <p>9 tell me whether or not there was any discussion of</p> <p>10 succession timelines and candidates for the position of</p> <p>11 president during the September 16, 2019 meeting of the</p> <p>12 board of directors of Fifth Third Bank?</p> <p>13 A. I cannot.</p> <p>14 Q. Based upon Exhibit Number 8, are you able to</p> <p>15 tell me who all of the presenters were at the</p> <p>16 September 16, 2019 board meeting for the board of</p> <p>17 directors for Fifth Third Bank?</p> <p>18 A. I could tell Mr. Carmichael,</p> <p>19 Mr. Spence, Mr. Bashara and Mr. Carbody.</p> <p>20 That's all I can tell.</p> <p>21 Q. Based upon Exhibit Number 8, are you able to</p> <p>22 determine whether or not those were all of the</p> <p>23 presenters at the board meeting for Fifth Third Bank on</p> <p>24 September 16, 2019?</p> <p>25 A. I cannot.</p>	<p>Page 65</p> <p>1 "Attached is the document Greg and I will utilize," Greg</p> <p>2 is Greg Carmichael; is that right?</p> <p>3 A. That's correct.</p> <p>4 Q. Beginning on the second page of Exhibit 9,</p> <p>5 Fifth Third McHugh 001105 through McHugh 001154, can you</p> <p>6 explain to me what that document is?</p> <p>7 MR. CIOFFI: Objection. Do you want to direct</p> <p>8 him to a particular page or do you want him to look</p> <p>9 at all of 45 pages? No particular page?</p> <p>10 MR. SABA: No. Do you understand my question?</p> <p>11 THE WITNESS: I do.</p> <p>12 BY MR. SABA:</p> <p>13 Q. Can you identify for me what that document is,</p> <p>14 please?</p> <p>15 A. This is a document that the full board uses</p> <p>16 for an update on executive talent management, the</p> <p>17 development of executive talent management and</p> <p>18 succession planning that we use as a collective board as</p> <p>19 we continue to follow a candidates' performance.</p> <p>20 Q. And how and when was this particular document</p> <p>21 used?</p> <p>22 A. It was presented at the December 17th meeting</p> <p>23 of the -- of the full board.</p> <p>24 Q. Would you have reviewed this prior to the</p> <p>25 board meeting?</p>
	<p>Page 66</p> <p>Page 67</p>

<p>Page 68</p> <p>1 A. I believe this would have been sent out prior 2 to the board meeting, yes.</p> <p>3 Q. Do you know when you received Mr. Shaffer's 4 email?</p> <p>5 A. I don't.</p> <p>6 Q. Based upon the email that Mr. Shaffer sent, it 7 would appear he sent it roughly a week before the 8 meeting itself; is that correct?</p> <p>9 A. I don't see a date on here.</p> <p>10 Q. Looking at the last line of his email, "I look 11 forward to seeing you next week."</p> <p>12 A. Okay. I would assume that's correct.</p> <p>13 Q. And is there a term for these roughly 50 pages 14 that comprise the back portion of Exhibit 9?</p> <p>15 MR. CIOFFI: Objection to the form. When you 16 say the back pages, what are you referring to?</p> <p>17 MR. SABA: Let me rephrase.</p> <p>18 BY MR. SABA:</p> <p>19 Q. The document that's Bates stamped McHugh 20 001105 through 001154, attached to the email of 21 Mr. Shaffer, is there a particular term that's used for 22 this document?</p> <p>23 A. As it says on 1105, Human Capital Executive 24 Talent Management and Succession Plan Updates.</p> <p>25 Q. Have you ever heard this referred to as the</p>	<p>Page 70</p> <p>1 committee would review this along with the chairman/CEO 2 in preparing the agenda and preparing the materials for 3 this meeting.</p> <p>4 Q. Who are those three people?</p> <p>5 A. At this time frame it would have been Greg 6 Carmichael, Marsha Williams, and Michael McCallister.</p> <p>7 Q. Would you have seen any drafts of the board of 8 directors human capital and executive talent management 9 succession plan updates?</p> <p>10 A. No. I would only see whatever was going to be 11 presented.</p> <p>12 Q. Do you know if Mr. McCallister saw any drafts 13 of the board of directors human capital and executive 14 talent management succession plan updates?</p> <p>15 A. I don't know.</p> <p>16 Q. Do you know if -- you said Marsha Williams; is 17 that right?</p> <p>18 A. That's what I said, yes.</p> <p>19 Q. Do you know if Ms. Williams saw any drafts of 20 the board of directors human capital and executive 21 talent management and succession plan updates?</p> <p>22 A. I don't know.</p> <p>23 Q. Did the board make any decisions based in 24 whole or in part upon the information provided in the 25 board of directors human capital and executive talent</p>
<p>Page 69</p> <p>1 talent deck?</p> <p>2 A. No.</p> <p>3 Q. And how is this document -- strike that. 4 How was this document used during the 5 December 17, 2019 board meeting?</p> <p>6 A. The full board reviews, the strategic -- human 7 capital strategic priorities, the talent framework, the 8 development of management, executive succession planning 9 materials. So the full board reviews this to be able to 10 observe how management has continued to develop and be 11 prepared for the future.</p> <p>12 Q. So does the full board go through this 13 document in detail?</p> <p>14 A. Yes.</p> <p>15 Q. Who prepares the board of directors human 16 capital executive talent management and succession plan 17 updates?</p> <p>18 A. I don't know everyone that prepares it.</p> <p>19 Q. This is not prepared by the board, it's 20 prepared for the board, correct?</p> <p>21 A. It's prepared in combination with the board.</p> <p>22 Q. And what role does the board play in preparing 23 this document?</p> <p>24 A. The board -- so in this case, the lead 25 director and the chair of the human capital compensation</p>	<p>Page 71</p> <p>1 management and succession plan updates?</p> <p>2 MR. CIOFFI: Objection to the form. Any 3 decisions about what?</p> <p>4 BY MR. SABA:</p> <p>5 Q. Do you understand the question?</p> <p>6 MR. CIOFFI: It's vague, but it's your 7 question. You may answer if you have an answer.</p> <p>8 THE WITNESS: I understand what you said, but 9 I don't understand the question. Repeat the 10 question, please.</p> <p>11 BY MR. SABA:</p> <p>12 Q. Sure. I asked if the board made any 13 decisions, based in whole or in part, on the information 14 provided in the board of directors human capital and 15 executive talent management and succession plan updates?</p> <p>16 A. I don't recall at this particular meeting if 17 we made decisions or not.</p> <p>18 Q. To be more specific, did the board of 19 directors make any decisions regarding succession 20 planning for president and/or CEO based upon any of the 21 information provided in the human capital and executive 22 talent management and succession plan updates?</p> <p>23 A. I don't know if it was this exact meeting.</p> <p>24 Q. What role would this document play with 25 respect to the succession planning process for president</p>

<p>1 and/or CEO?</p> <p>2 A. Well, this document is used to give the board,</p> <p>3 again, the full board, an update on the qualities of</p> <p>4 management that might be considered, how they've</p> <p>5 developed over the past year, areas where they may be</p> <p>6 working on particular different development attributes,</p> <p>7 and so all this is assembled for the board to observe,</p> <p>8 and then the board takes this very seriously. As I said</p> <p>9 earlier, this is the number one job of the board, to</p> <p>10 determine who is going to be the future leader or</p> <p>11 leaders of the company. So we take this very serious,</p> <p>12 and we question vigorously the presenter or presenters</p> <p>13 into the content of this meeting.</p> <p>14 Q. When you say "the presenter or the presenters"</p> <p>15 that you question seriously, is this information also</p> <p>16 presented to the board as a PowerPoint?</p> <p>17 A. Not -- it's presented like you've handed it to</p> <p>18 me here.</p> <p>19 Q. And does the board question anybody about the</p> <p>20 content of the information that's contained in the board</p> <p>21 of directors human capital and executive talent</p> <p>22 management and succession plan updates?</p> <p>23 A. Absolutely.</p> <p>24 Q. And who does the board question about that?</p> <p>25 A. We will question the current CEO. We'll</p>	<p>Page 72</p> <p>1 question is, was there ever a decision made, based in</p> <p>2 whole or in part, on the information provided in Exhibit</p> <p>3 Number 9 regarding the succession for president and/or</p> <p>4 CEO?</p> <p>5 A. I don't recall.</p> <p>6 Q. If I can refer you to Fifth Third McHugh</p> <p>7 001142.</p> <p>8 A. 12? 1112?</p> <p>9 Q. No. 1142.</p> <p>10 A. I'm sorry. Okay.</p> <p>11 Q. Can you identify what is on that page for me,</p> <p>12 please?</p> <p>13 A. This is a page that says CEO succession where</p> <p>14 the board -- the CEO reports to the board of directors</p> <p>15 and it relates on -- it looks at different people within</p> <p>16 the company who might be considered, you know, for</p> <p>17 possible succession to the CEO over -- this illustrates</p> <p>18 over the next seven-plus years.</p> <p>19 Q. Have you seen this document before?</p> <p>20 A. I have.</p> <p>21 Q. And what does this document indicate about who</p> <p>22 would be ready to be CEO over the next seven years?</p> <p>23 A. It indicates that Mr. Spence could be ready in</p> <p>24 three-plus years. Mr. Lamb in seven-plus years.</p> <p>25 Q. Who is Mr. Lamb?</p> <p>Page 74</p>
<p>1 question the head of HR that generally is in the</p> <p>2 meeting. We'll question them on the development, what</p> <p>3 they're seeing with the development of different people</p> <p>4 that might be mentioned in here. But we question the</p> <p>5 CEO vigorously, as I said.</p> <p>6 Q. And the CEO is Mr. Carmichael; is that</p> <p>7 correct?</p> <p>8 A. That's correct.</p> <p>9 Q. And the head of HR, would that be Mr. Shaffer?</p> <p>10 A. At this meeting, that would be correct.</p> <p>11 Q. You said you didn't recall if there were</p> <p>12 decisions made at this particular meeting regarding the</p> <p>13 information provided in Exhibit 9. Were there decisions</p> <p>14 that were ultimately made at either another meeting or</p> <p>15 this meeting, based upon the information provided in</p> <p>16 Exhibit Number 9?</p> <p>17 MR. CIOFFI: Objection to the form. Earlier</p> <p>18 you asked in whole or part. Is that part of your</p> <p>19 question or just --</p> <p>20 MR. SABA: Sure. I can rephrase it that way.</p> <p>21 BY MR. SABA:</p> <p>22 Q. You didn't -- Mr. Heminger, you indicated you</p> <p>23 didn't recall whether or not a decision was made at this</p> <p>24 particular December 2019 meeting regarding the</p> <p>25 information provided in Exhibit Number 9. And my</p> <p>Page 73</p>	<p>1 A. He was an executive with the -- with the bank</p> <p>2 back in this period of time. I don't believe he's with</p> <p>3 the company anymore.</p> <p>4 Q. Is it fair to say that Mr. Lamb was considered</p> <p>5 as a candidate for president and/or CEO of Fifth Third</p> <p>6 Bank?</p> <p>7 A. No, it did not -- this page does not indicate</p> <p>8 to me that he is being considered. It's saying that he</p> <p>9 may be developed to be able to be considered in</p> <p>10 seven-plus years, but not being considered right at this</p> <p>11 time.</p> <p>12 Q. What does it indicate about Mr. Spence?</p> <p>13 A. It says that if he continues his development,</p> <p>14 he may be, you know, considered in three-plus years.</p> <p>15 Q. With respect to emergency successor, what does</p> <p>16 that mean?</p> <p>17 A. That means if something were to happen to the</p> <p>18 CEO, you know, something tragic or catastrophic were to</p> <p>19 happen to the CEO, that we would possibly consider in</p> <p>20 this case Mr. Tazun or Mr. McHugh or possibly a board</p> <p>21 member as an interim successor until we could locate who</p> <p>22 we want or determine who we want to be the CEO going</p> <p>23 forward.</p> <p>24 Q. The list that we see there, Mr. Tazun,</p> <p>25 Mr. McHugh, and then a board member, is that ranked by</p> <p>Page 75</p>

<p>1 order of priority or are those just individuals under 2 consideration? 3 A. I believe it's just individuals under 4 consideration. 5 Q. Do you know who prepared 001142? 6 A. It would have been prepared with the input of 7 the lead director, the head of the comp committee, and 8 the CEO, and the head of HR. 9 Q. What characteristics would be required to be 10 considered an emergency successor for CEO? 11 A. Oh, it -- you know, someone who can keep the 12 business operating for a period of time that takes to 13 recruit and determine who the next CEO should be. But 14 characteristics to have the knowledge to how to continue 15 running the bank during this period of time, and to be 16 able to direct, you know -- direct the responsibilities 17 of, you know, workings of the bank under control. 18 Q. In your experience with the various boards 19 you've been on and companies you've been involved with, 20 was there ever a situation where an emergency CEO needed 21 to be appointed? 22 A. At Ohio State we had one indication or one 23 particular time, yes. 24 Q. When did that occur? After the Michigan 25 football game?</p>	Page 76	<p>1 considered, only on an emergency interim basis. 2 Q. Do you recall when that conversation took 3 place? 4 A. In this time frame of the document that we're 5 looking at. 6 Q. The December 2019 time frame; is that correct? 7 A. That's correct. 8 Q. Outside that time frame, were there any other 9 discussions of Mr. McHugh serving as the emergency 10 successor as CEO? 11 A. I don't recall the exact time frame if we -- 12 in subsequent meetings, I do recall this time frame, but 13 I don't recall a subsequent meeting or prior meetings. 14 Q. Can you explain to me what, if any, different 15 characteristics would be required from an emergency CEO 16 versus the regular replacement of a CEO? 17 A. Yes. When you -- in all of my background and 18 naming new CEOs to companies, you're looking for someone 19 that you believe has the superior qualities to be able 20 to be the CEO for a long period of time. So this 21 process is going through and observing candidates that 22 as they continue to develop, and you're looking for 23 those superior qualities of strategic planning, 24 strategic vision, interpersonal skills, presentations to 25 investment communities, and someone that really has the</p>	Page 78
<p>1 A. Both of them. Coincidentally it did occur, 2 but had nothing to do with it. In 2019, 2020 time 3 frame. 4 Q. And using that as an example, how long did it 5 take to find the -- strike that. 6 In that situation where there was an 7 emergency -- a need for an emergency CEO -- how long did 8 that person who came in as the emergency CEO, how long 9 did they remain in that position? 10 A. About four months. 11 Q. Beyond your experience at Ohio State, have you 12 had any other situations where it was necessary to put 13 in an emergency CEO? 14 A. No. 15 Q. Do you recall any of the discussions that the 16 board had with respect to Mr. McHugh serving as an 17 emergency successor CEO? 18 MR. CIOFFI: Objection to the form. He didn't 19 testify that they did, but you may answer. 20 THE WITNESS: I recall we had that discussion, 21 yes. 22 BY MR. SABA: 23 Q. Do you recall when that discussion took place? 24 A. That discussion was in the event of an 25 emergency, that Mr. McHugh would be one that would be</p>	Page 77	<p>1 depth, the breadth, and has the pulse of this entire 2 banking industry, that really understands what's going 3 on, whether it's venture capital, whether it's activism, 4 whether it's fed policy, somebody who has that depth and 5 breadth that can really fulfill the entire engagement 6 process of being a CEO. 7 Q. You said "long period of time." What did you 8 mean by a long period of time? 9 A. Well, I mean more than, you know, as I 10 answered before, on an interim basis, you know, four to 11 five months. So I'm talking about a longer period of 12 time. Someone who can take the span of control. And 13 you always want to look at a CEO that would have a 14 runway of, you know, probably a minimum of five to seven 15 years. 16 Q. What do you mean, "a runway of a minimum of 17 five to seven years"? 18 A. Someone who you believe you can develop and 19 has a -- someone that you believe has the passion and 20 the ability, you know, to work that long. 21 Q. What are the factors that determine whether or 22 not somebody has a runway of a minimum of five to seven 23 years? 24 A. What I just said, strategic vision, 25 interpersonal skills, depth and breadth of the market.</p>	Page 79

<p>Page 80</p> <p>1 Somebody who really understands how to take the business</p> <p>2 forward.</p> <p>3 Q. How does that translate in determining whether</p> <p>4 or not that runway is five to seven years?</p> <p>5 A. You look and see how they have developed over</p> <p>6 time and whether or not you believe they can continue to</p> <p>7 develop and perform at the, you know, exceptional level</p> <p>8 that you expect.</p> <p>9 Q. Is there a certain age at which you believe</p> <p>10 someone would not be able to complete the runway of a</p> <p>11 minimum of five to seven years?</p> <p>12 A. It's all individual, based on the individual.</p> <p>13 Q. You're identifying the attributes of the</p> <p>14 chairman during the regular process. What are the</p> <p>15 distinctions between those and the emergency successor</p> <p>16 CEO?</p> <p>17 MR. CIOFFI: Objection to the form. You used</p> <p>18 the word "chairman."</p> <p>19 MR. SABA: Excuse me. Let me rephrase the</p> <p>20 question.</p> <p>21 BY MR. SABA:</p> <p>22 Q. You're identifying the -- what is required for</p> <p>23 a CEO during the regular succession process and the</p> <p>24 characteristics you're looking for. How do those differ</p> <p>25 from the characteristics of an emergency successor CEO?</p>	<p>Page 82</p> <p>1 current development and the expected potential, in this</p> <p>2 case, of Tim Spence.</p> <p>3 Q. And how is this information used?</p> <p>4 A. I'm sorry?</p> <p>5 Q. How does the board use this information? What</p> <p>6 do you do with it?</p> <p>7 A. We look at this information for every</p> <p>8 executive that is presented and we use this to really</p> <p>9 question. In this case the CEO that's presenting, the</p> <p>10 head of HR that might be there, but we use this, as I</p> <p>11 say, in all cases of everyone that's being presented to</p> <p>12 really question and based on the observations that we</p> <p>13 have and the meetings that we've set in on the</p> <p>14 performance of what we think the potential could be of</p> <p>15 this person.</p> <p>16 Q. And who would have provided the information on</p> <p>17 McHugh 001135?</p> <p>18 A. It would have been provided by the head of HR,</p> <p>19 the CEO, in review and consultation with the head of the</p> <p>20 compensation committee and the lead director.</p> <p>21 Q. Would you have seen any drafts of McHugh</p> <p>22 001135?</p> <p>23 A. This is all I would see, right here.</p> <p>24 MR. SABA: If we can go off the record.</p> <p>25 THE VIDEOGRAPHER: The time is 12:18 p.m. We</p>
<p>Page 81</p> <p>1 A. As you're going through this process, you're</p> <p>2 looking at the skills of each individual and, you know,</p> <p>3 the pyramid is a very, very -- gets narrow very quick.</p> <p>4 So you're looking for, what I said earlier, the superior</p> <p>5 qualities. Every executive I expect has qualities,</p> <p>6 that's what I have observed throughout my entire, you</p> <p>7 know, tenure as an executive, but you're looking for</p> <p>8 that person that has the superior qualities versus</p> <p>9 someone who can keep the lights on and keep the business</p> <p>10 running on an interim basis under control, and I would</p> <p>11 expect any executive to be able to do that at this</p> <p>12 level, but you're looking for that person who can, for a</p> <p>13 long period of time, be able to manage and bring their</p> <p>14 vision to the table and not someone that's just, you</p> <p>15 know, can run the place for a short period of time.</p> <p>16 Q. And, again, that long period of time that you</p> <p>17 just referenced, that's the five to seven year period?</p> <p>18 A. It could be -- it could be three to five. It</p> <p>19 could be -- it's longer than four months, let's put it</p> <p>20 that way.</p> <p>21 Q. Okay. If I could refer you to 001135.</p> <p>22 A. Got it.</p> <p>23 Q. Can you identify for me what that is on McHugh</p> <p>24 001135?</p> <p>25 A. This would be the document used to review the</p>	<p>Page 83</p> <p>1 are going off the record.</p> <p>2 (A recess was taken from 12:18 p.m. to</p> <p>3 12:19 p.m.)</p> <p>4 THE VIDEOGRAPHER: The time is 12:19 p.m. We</p> <p>5 are back on the record.</p> <p>6 BY MR. SABA:</p> <p>7 Q. Mr. Heminger, you were explaining how the</p> <p>8 information presented on McHugh 001135 would be used by</p> <p>9 the board, with respect to succession planning and</p> <p>10 identifying potential candidates for different positions</p> <p>11 at the bank; is that correct?</p> <p>12 A. That's correct.</p> <p>13 Q. And that would be true for all the summary</p> <p>14 pages that we see of explaining individuals that are on</p> <p>15 McHugh 001127 through McHugh 1137; is that correct?</p> <p>16 MR. CIOFFI: Objection to the form. Could you</p> <p>17 read the question back, please?</p> <p>18 (The record was read.)</p> <p>19 MR. CIOFFI: And the indefinite pronoun,</p> <p>20 "that" means what?</p> <p>21 MR. SABA: We can clarify.</p> <p>22 MR. CIOFFI: Please.</p> <p>23 BY MR. SABA:</p> <p>24 Q. Can you identify what we see on McHugh pages</p> <p>25 001127 through McHugh 001137?</p>

<p>Page 84</p> <p>1 A. In this case, the board is reviewing the 2 performance and potential of -- I should say the 3 background, we are looking at the background and the 4 development of the potential executive, and then what we 5 see is the potential that they might be able to aspire 6 to in the future.</p> <p>7 Q. And just to clarify, I think foundationally 8 going back to my question, can you just clarify for the 9 record what we see on McHugh 001127 through McHugh 10 001137?</p> <p>11 A. It's an individual document on each of the 12 officers that are being reviewed as to their -- as to 13 their background, their development, and their 14 potential.</p> <p>15 Q. And I believe you were previously explaining 16 how that information is used by the board; is that 17 correct?</p> <p>18 A. That's correct. 19 (Plaintiff's Exhibit 10 is marked for 20 identification.) 21 BY MR. SABA:</p> <p>22 Q. Mr. Heminger, I've handed you what has been 23 marked as Exhibit Number 10. Can you identify that for 24 me, please?</p> <p>25 A. Minutes of the Joint Meeting of the Board of</p>	<p>Page 86</p> <p>1 are prepared?</p> <p>2 A. I would.</p> <p>3 Q. As far as you know, have you seen the minutes 4 for the meeting that took place on December 17th, 2019?</p> <p>5 A. I would expect that I would.</p> <p>6 Q. Under Executive Performance Review, referring 7 to the second paragraph, the first sentence reads, "They 8 then reviewed the proposed performance review for each 9 executive officer other than Mr. Carmichael, including a 10 discussion of key achievements, strengths, 11 opportunities, and development planning priorities for 12 such individuals."</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. And would it appear that "they" is referring 16 to Mr. Carmichael and Mr. Shaffer?</p> <p>17 A. That's correct.</p> <p>18 Q. And with respect to their review of the 19 proposed performance review for each executive officer, 20 is that referring to the information that is provided on 21 Exhibit Number 9 for the Bates stamped pages 001127 22 through 001137?</p> <p>23 A. That would be correct.</p> <p>24 Q. And do you recall, are they just summarizing 25 the information in each of those sheets, or are they</p>
<p>Page 85</p> <p>1 Directors, December 17, 2019.</p> <p>2 Q. And this is for both Fifth Third Bancorp and 3 Fifth Third Bank; is that correct?</p> <p>4 A. Yes.</p> <p>5 Q. And you were in attendance at that meeting; is 6 that right?</p> <p>7 A. Yes.</p> <p>8 Q. And Mr. Carmichael presided over that meeting; 9 is that right?</p> <p>10 A. Yes.</p> <p>11 Q. And Exhibit Number 10 is Bates stamped Fifth 12 Third McHugh 007108 through 007128; is that correct?</p> <p>13 A. That's correct.</p> <p>14 Q. Referring you to the last page, Fifth Third 15 McHugh 007128, there's a signature line for Saema 16 Somalya as assistant secretary; do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. Do you know why these minutes are not signed?</p> <p>19 A. No.</p> <p>20 Q. Do you know if these are a draft of the 21 minutes for that meeting or are they a final copy?</p> <p>22 A. I don't know.</p> <p>23 Q. Have you seen these minutes before?</p> <p>24 A. I don't recall.</p> <p>25 Q. Would you typically see the minutes after they</p>	<p>Page 87</p> <p>1 providing additional information?</p> <p>2 A. Well, we go into detailed discussions and 3 sometimes debate as the board is trying to, you know, 4 gain a consensus of how they feel on the development of 5 different officers.</p> <p>6 Q. And that debate and discussion is -- I'm just 7 trying to understand where the information comes from -- 8 that debate and discussion you referenced, is it based 9 upon the information that we see in Exhibit 9, 001127 10 through 001137?</p> <p>11 A. Correct.</p> <p>12 Q. Other than the information we see here in 13 Exhibit 9, is there additional information in document 14 form or otherwise that Mr. Carmichael, Mr. Shaffer, are 15 also presenting during that time?</p> <p>16 MR. CIOFFI: Objection. You're confining this 17 question only to what Carmichael and Shaffer 18 presented or other information? You started out 19 broad and then you sort of all of a sudden narrowed 20 it.</p> <p>21 BY MR. SABA:</p> <p>22 Q. My question goes back to, I'm focused -- do 23 you understand, Mr. Heminger, what I'm talking about, 24 the December 19th -- excuse me, the December 17th 25 meeting, 2019?</p>

<p>Page 88</p> <p>1 A. Frame it for me again.</p> <p>2 Q. What I'm asking is, based upon the minutes,</p> <p>3 Mr. Carmichael and Mr. Shaffer reviewed the proposed</p> <p>4 performance review for each executive officer, including</p> <p>5 a discussion of key achievements, strengths,</p> <p>6 opportunities, and development planning opportunities</p> <p>7 for such individuals. What I am trying to get an</p> <p>8 understanding of is the information that went into</p> <p>9 that presentation by Mr. Carmichael, Mr. Shaffer in that</p> <p>10 discussion. We did discuss from Exhibit 9 the various</p> <p>11 pages regarding the respective officers. My question</p> <p>12 now goes to, as you sit here today, do you recall if</p> <p>13 they referred to any other documentation or information</p> <p>14 regarding each of these officers?</p> <p>15 MR. CIOFFI: I'll renew my objection, but if</p> <p>16 you can answer. Again, you're only talking about</p> <p>17 what Carmichael and Shaffer said, nobody else.</p> <p>18 MR. SABA: I am talking about right now this</p> <p>19 presentation.</p> <p>20 THE WITNESS: Yes. I'm not aware of any other</p> <p>21 documentation, but we had vigorous discussions</p> <p>22 about each individual.</p> <p>23 BY MR. SABA:</p> <p>24 Q. But in terms of other information, as you sit</p> <p>25 here today, you don't recall any other information other</p>	<p>Page 90</p> <p>1 executive officer/CEO position."</p> <p>2 Do you see that sentence?</p> <p>3 A. I do.</p> <p>4 Q. Did I read that correctly?</p> <p>5 A. Yes.</p> <p>6 Q. Who were the candidates that Mr. Carmichael</p> <p>7 and Mr. Shaffer referenced and reviewed?</p> <p>8 A. Well, this meeting, as in every meeting that</p> <p>9 we do succession planning, we review all of the officers</p> <p>10 and we determine from that whether or not we have any</p> <p>11 internal candidate or candidates that might be</p> <p>12 considered for possible potential to CEO.</p> <p>13 Q. The next sentence reads, "They reviewed top</p> <p>14 succession candidates, including Mr. Spence, and</p> <p>15 discussed the potential timelines for their readiness</p> <p>16 and key development priorities for each such candidate."</p> <p>17 Do you see that?</p> <p>18 A. I do.</p> <p>19 Q. Who were the other candidates that were</p> <p>20 reviewed other than Mr. Spence?</p> <p>21 MR. CIOFFI: Objection. Asked and answered.</p> <p>22 Redundant. He just answered it, and argumentative</p> <p>23 here. You're just repeating the question so you</p> <p>24 get the answer you want. You're entitled to an</p> <p>25 answer, but not the answer you want.</p>
<p>Page 89</p> <p>1 than what we see provided here in Exhibit 9 by</p> <p>2 Mr. Carmichael and Mr. Shaffer during that portion?</p> <p>3 A. I don't recall.</p> <p>4 Q. If you could turn to Fifth Third McHugh</p> <p>5 007109, which is the second page of Exhibit 10.</p> <p>6 Referring first to the resolution that we -- that's</p> <p>7 first listed on the top of the second page, McHugh</p> <p>8 007109, can you read that resolution to me?</p> <p>9 A. "Resolved that the chief executive officer</p> <p>10 shall have the authority to negotiate potential role</p> <p>11 changes for each of Mr. Forrest and Mr. Anderson</p> <p>12 respectively, including, at his discretion, a potential</p> <p>13 removal of category 1, section 16, and Regulation O</p> <p>14 status from such individuals, and to appoint succession</p> <p>15 candidates" -- excuse me -- "appoint succession</p> <p>16 candidates for the roles of chief risk officer, head of</p> <p>17 commercial banking, and treasurer from among the</p> <p>18 candidates discussed at the meeting."</p> <p>19 Q. And the chief executive officer referred to</p> <p>20 there is Mr. Carmichael, correct?</p> <p>21 A. That's correct.</p> <p>22 Q. Referring to the first full paragraph after</p> <p>23 the resolutions, it says, "Thereafter, Mr. Carmichael</p> <p>24 and Mr. Shaffer initiated a review of potential</p> <p>25 succession timelines and candidates for the chief</p>	<p>Page 91</p> <p>1 BY MR. SABA:</p> <p>2 Q. Go ahead, Mr. Heminger?</p> <p>3 MR. CIOFFI: You may answer.</p> <p>4 THE WITNESS: Every executive here that is</p> <p>5 listed on these pages 27 through 37, we review, and</p> <p>6 as I stated earlier, we vigorously question.</p> <p>7 That's why the resolution that I just reviewed,</p> <p>8 where we were making a couple changes, is because</p> <p>9 the board questions the potential and the current</p> <p>10 performance of a couple of executives. So we</p> <p>11 review everyone in this -- on these pages to</p> <p>12 determine what their potential might be.</p> <p>13 BY MR. SABA:</p> <p>14 Q. And so everyone would be considered a top</p> <p>15 succession candidate?</p> <p>16 MR. CIOFFI: Objection. Argumentative. You</p> <p>17 may answer.</p> <p>18 THE WITNESS: I didn't say "a top succession."</p> <p>19 I said to determine their succession, their</p> <p>20 potential. I didn't say that they were -- everyone</p> <p>21 is going to be considered to be the CEO.</p> <p>22 BY MR. SABA:</p> <p>23 Q. So going back to that second sentence and how</p> <p>24 the minutes read, they say, "They reviewed top</p> <p>25 succession candidates, including Mr. Spence." Is every</p>

<p>1 officer considered a top succession candidate?</p> <p>2 MR. CIOFFI: Objection. Asked and answered.</p> <p>3 This is the fourth time you asked it, but you may</p> <p>4 answer.</p> <p>5 THE WITNESS: Every officer is considered a</p> <p>6 candidate for what their potential might be, but</p> <p>7 not everyone can ascend to -- but not everyone does</p> <p>8 ascend to be a candidate to be the CEO.</p> <p>9 BY MR. SABA:</p> <p>10 Q. Do you see a distinction between a succession</p> <p>11 candidate and a top succession candidate?</p> <p>12 MR. CIOFFI: Objection. Distinction how?</p> <p>13 BY MR. SABA:</p> <p>14 Q. Go ahead.</p> <p>15 A. Repeat the question.</p> <p>16 Q. Do you -- and I'm asking for your opinion. Do</p> <p>17 you see a distinction between a succession candidate and</p> <p>18 a top succession candidate?</p> <p>19 A. Excuse me. I had turned this off. That's</p> <p>20 what happens when you have hearing aids. Sorry. And I</p> <p>21 apologize.</p> <p>22 A distinction between a top succession</p> <p>23 candidate and a candidate?</p> <p>24 Q. Correct.</p> <p>25 A. Yeah, everyone is a candidate, but only very,</p>	<p>Page 92</p> <p>1 MR. SABA: I didn't finish my question.</p> <p>2 BY MR. SABA:</p> <p>3 Q. Mr. Heminger, the sentence in the minutes</p> <p>4 indicates that Mr. Carmichael and Mr. Shaffer reviewed</p> <p>5 more than one top succession candidate. And my question</p> <p>6 is, because you indicated that Mr. Spence was the only</p> <p>7 top succession candidate at that time, correct?</p> <p>8 A. What I stated was --</p> <p>9 MR. CIOFFI: Wait a minute. Objection.</p> <p>10 It's repetitive, argumentative. You're stating</p> <p>11 and testifying as to your interpretation. He</p> <p>12 already answered as to his interpretation the</p> <p>13 sentence.</p> <p>14 BY MR. SABA:</p> <p>15 Q. Mr. Heminger?</p> <p>16 MR. CIOFFI: Do you have a different answer</p> <p>17 than you gave last time?</p> <p>18 THE WITNESS: As I stated, everyone is</p> <p>19 considered a candidate. Only one out of this</p> <p>20 funnel that we go through of all the candidates,</p> <p>21 only one graded out to what we considered, on this</p> <p>22 particular date, to have the potential to be, as is</p> <p>23 stated here, president in one to two years, CEO</p> <p>24 three-plus years. Only one of the candidates is</p> <p>25 considered to have that potential.</p> <p>Page 94</p>
<p>1 very few will ever ascend to being a top candidate.</p> <p>2 Q. And so with respect to the review of the top</p> <p>3 succession candidates that was done by Mr. Carmichael</p> <p>4 and Mr. Shaffer, who was included in the top succession</p> <p>5 candidates?</p> <p>6 A. I'll have to review each one to determine</p> <p>7 that.</p> <p>8 Q. Okay.</p> <p>9 A. Okay. In this presentation, only Tim Spence</p> <p>10 was considered to have the potential to be a top</p> <p>11 candidate.</p> <p>12 Q. Are you able to explain why the minutes</p> <p>13 referred to them reviewing top succession candidates,</p> <p>14 plural, including Mr. Spence?</p> <p>15 A. As I stated earlier, all officers are reviewed</p> <p>16 as candidates. So a distinction between a candidate and</p> <p>17 top candidate, I think that's a parallel.</p> <p>18 Q. Well, their sense would indicate they reviewed</p> <p>19 more than one top succession candidate?</p> <p>20 A. I just --</p> <p>21 MR. CIOFFI: Objection. Argumentative. He</p> <p>22 answered the question that they're, in his mind,</p> <p>23 parallel concepts. You're now arguing with him to</p> <p>24 get the answer you want, which is improper. Read</p> <p>25 the question back, please.</p> <p>Page 93</p>	<p>1 BY MR. SABA:</p> <p>2 Q. What were the key development priorities for</p> <p>3 Mr. Spence?</p> <p>4 A. Well, Mr. Spence came to the bank with a</p> <p>5 tremendous background in banking consultancy so as to</p> <p>6 develop him in operations. He had all the requisite</p> <p>7 skills, the financial skills, the financial digital</p> <p>8 platform background, he understood that. So as to</p> <p>9 develop him in operations, to develop him in executive</p> <p>10 leadership roles and just to continue to really observe</p> <p>11 his skills and observe how, you know, he continued to,</p> <p>12 you know, develop and perform. But as I said, he had</p> <p>13 all the requisite skills when he joined the firm, and</p> <p>14 then it was just to continue to develop him in</p> <p>15 operations, in markets, understand his ability to do M</p> <p>16 and A work, mergers and acquisitions work.</p> <p>17 Q. Anything else?</p> <p>18 A. I think that sums it up.</p> <p>19 Q. You indicated that all of the officers are</p> <p>20 considered, and that you have detailed discussions and</p> <p>21 questions regarding each person. Were there any</p> <p>22 detailed discussions or conversations regarding</p> <p>23 Mr. McHugh as a candidate for the chief executive</p> <p>24 officer position?</p> <p>25 A. We would have had discussions, yes.</p> <p>Page 95</p>

<p>Page 96</p> <p>1 Q. And what were those discussions?</p> <p>2 A. We had just discussed, again, his development,</p> <p>3 his performance within the bank and the different jobs</p> <p>4 he had had. We had several discussions among the board</p> <p>5 members as to that performance and where we would see</p> <p>6 the potential and discussed those types of items.</p> <p>7 Q. And what were the content of those</p> <p>8 discussions?</p> <p>9 A. It was a clear consensus by the board that we</p> <p>10 didn't feel that Mr. McHugh had the potential to be the</p> <p>11 CEO of the company.</p> <p>12 Q. And what was that based upon?</p> <p>13 A. Based on his strategic vision, presentation</p> <p>14 skills, and just performance of the organizations of</p> <p>15 which he was operating.</p> <p>16 Q. What was your understanding of Mr. McHugh's</p> <p>17 strategic vision?</p> <p>18 A. You know, we would see his vision of the</p> <p>19 operations and, again, over this period of time that I</p> <p>20 have been on the board he had several different jobs and</p> <p>21 you would continue -- or you would get a flavor for how</p> <p>22 he continued to develop and what his vision might be</p> <p>23 and, you know, any executive at this level you expect to</p> <p>24 have a good vision and be a good tactical operator, but</p> <p>25 a big difference between being a tactical operator and a</p>	<p>Page 98</p> <p>1 A. I can't recall specific examples.</p> <p>2 Q. And then you said "performance of the areas of</p> <p>3 the corporation that were managed by Mr. McHugh"; is</p> <p>4 that correct?</p> <p>5 A. That's correct.</p> <p>6 Q. And what issues do you have with the</p> <p>7 performance of the areas of the corporation that were</p> <p>8 managed by Mr. McHugh?</p> <p>9 A. I don't have any specific areas of performance</p> <p>10 I recall. What I was trying to explain is that you just</p> <p>11 observe the different organizations that Mr. McHugh</p> <p>12 would be managing and how they were performing vis-à-vis</p> <p>13 business plan vis-à-vis the market, you know, again, the</p> <p>14 different organizations of which he may have been</p> <p>15 managing at the time.</p> <p>16 Q. Can you recall any specific situation where</p> <p>17 the areas of the corporation that were managed by</p> <p>18 Mr. McHugh were deficient relative to any business plan</p> <p>19 or to any areas of the market?</p> <p>20 MR. CIOFFI: Objection to the form of the</p> <p>21 question and any basis for it. He didn't testify</p> <p>22 that there was a deficiency. He testified it</p> <p>23 wasn't as good.</p> <p>24 MR. SABA: He didn't testify. That's your</p> <p>25 answer, Michael.</p>
<p>Page 97</p> <p>1 strategic operator. Strategic operator has the vision</p> <p>2 for where you can go and where can we expand the</p> <p>3 horizons of this business and the other business of</p> <p>4 boards that I've been on, and it's a rare quality. It's</p> <p>5 a superior quality to see somebody that has the whole</p> <p>6 package. And that's what we saw in Tim versus what we</p> <p>7 saw in Mr. McHugh.</p> <p>8 Q. Where did you get your understanding of</p> <p>9 Mr. McHugh's strategic vision?</p> <p>10 A. Different presentations that he would have</p> <p>11 made over the many years I've been on the board.</p> <p>12 Q. Anywhere else?</p> <p>13 A. No. No. We had -- you know, as a board</p> <p>14 member since 2006, I observed many, many presentations</p> <p>15 by Mr. McHugh. So I was able to have a pretty good</p> <p>16 understanding over all of these years as to what I</p> <p>17 thought the potential was.</p> <p>18 Q. You also said there was an issue with</p> <p>19 Mr. McHugh's presentation abilities. What was that?</p> <p>20 A. I was just making a comparison to his</p> <p>21 presentation skills, his command of the subject wasn't</p> <p>22 as strong as what we -- what I expected to see in a</p> <p>23 future CEO.</p> <p>24 Q. Do you have specific examples of any command</p> <p>25 of subject matter that Mr. McHugh did not have?</p>	<p>Page 99</p> <p>1 MR. CIOFFI: No, he testified three minutes</p> <p>2 ago, come on.</p> <p>3 MR. SABA: You testified to your own</p> <p>4 interpretation.</p> <p>5 MR. CIOFFI: You have a selective memory,</p> <p>6 Counsel, come on.</p> <p>7 BY MR. SABA:</p> <p>8 Q. Mr. Heminger, although I appreciate</p> <p>9 Mr. Cioffi's attempt to help you testify and to provide</p> <p>10 answers to you, if you can go back and answer my</p> <p>11 question please, and I can ask it again if you --</p> <p>12 A. Will you please.</p> <p>13 MR. CIOFFI: Objection. Asked and answered,</p> <p>14 but go ahead.</p> <p>15 MR. SABA: You answered it. He didn't.</p> <p>16 MR. CIOFFI: No, he answered it before. The</p> <p>17 record will speak for itself. Come on.</p> <p>18 BY MR. SABA:</p> <p>19 Q. Mr. Heminger, are you aware of any situations</p> <p>20 where Mr. McHugh's management of any areas of the</p> <p>21 corporation were deficient relative to either any</p> <p>22 business plan or any market performance?</p> <p>23 A. And I did not state "deficient." I stated</p> <p>24 they weren't as, in my opinion, weren't as polished as</p> <p>25 what we expected in the next CEO.</p>

<p>Page 100</p> <p>1 Q. Can you give me any specific examples where</p> <p>2 Mr. McHugh's management of any particular areas of the</p> <p>3 corporation were not as polished as you would expect</p> <p>4 from the next CEO?</p> <p>5 A. I don't recall.</p> <p>6 Q. Can you give me a time frame of when these</p> <p>7 situations were -- would have occurred where</p> <p>8 Mr. McHugh's performance was not as polished?</p> <p>9 A. I observed -- I've been on the board for 16</p> <p>10 years, so probably over the last 10 years and 8 years in</p> <p>11 Mr. McHugh's tenure with the company, I would have</p> <p>12 observed his presentation.</p> <p>13 Q. My specific question goes to where his</p> <p>14 performance with respect to the areas of the corporation</p> <p>15 that he managed were not as polished as you would expect</p> <p>16 from a CEO?</p> <p>17 A. Yeah. I can't -- I don't recall the exact</p> <p>18 incident.</p> <p>19 Q. And do you know if there was an incident at</p> <p>20 all, even though you're saying -- you're referring to an</p> <p>21 incident that you can't recall. Was there a particular</p> <p>22 incident?</p> <p>23 A. What I'm comparing against is Mr. McHugh's</p> <p>24 performance versus Mr. Spence, and in my opinion, there</p> <p>25 was a completely superior qualities performed by</p>	<p>Page 102</p> <p>1 businesses.</p> <p>2 Q. Based upon that, can you say whether or not</p> <p>3 Mr. Spence's management of areas of the corporation were</p> <p>4 superior to the areas -- and performance were superior</p> <p>5 to those managed by Mr. McHugh?</p> <p>6 MR. CIOFFI: Objection to the form. Can you</p> <p>7 read the question back? I'm confused by it.</p> <p>8 (The record was read.)</p> <p>9 MR. CIOFFI: Objection to the form.</p> <p>10 MR. SABA: Go ahead.</p> <p>11 MR. CIOFFI: If you can answer.</p> <p>12 THE WITNESS: It was the observation of a</p> <p>13 board member, every board member has the</p> <p>14 requirement and the duty to observe the performance</p> <p>15 of different executives. It's my opinion that</p> <p>16 Mr. Spence was clearly a -- had superior qualities</p> <p>17 in all the areas that I mentioned earlier.</p> <p>18 BY MR. SABA:</p> <p>19 Q. Do you have any objective information with</p> <p>20 respect to the areas of the bank that he managed or with</p> <p>21 respect to the people reporting to him that he was</p> <p>22 superior to Mr. McHugh in any of those areas?</p> <p>23 MR. CIOFFI: Objection. He testified that it</p> <p>24 was his judgment. It wasn't -- it was his</p> <p>25 judgment.</p>
<p>Page 101</p> <p>1 Mr. Spence.</p> <p>2 Q. So let's talk about those superior qualities</p> <p>3 that you talked about, Mr. Spence's superior qualities.</p> <p>4 With respect to the areas of the corporation that were</p> <p>5 managed by Mr. Spence compared to Mr. -- the areas</p> <p>6 managed by Mr. McHugh, where were -- in what situation</p> <p>7 were Mr. Spence's management superior to Mr. McHugh's?</p> <p>8 A. Sure. I think he had a superior strategic</p> <p>9 vision, understood venture capital markets, understood</p> <p>10 the competition much better. Had a very strong ability</p> <p>11 to, in my opinion, to build a culture within the</p> <p>12 company, a culture of working together as one single</p> <p>13 team, and I just observed that those were superior</p> <p>14 qualities.</p> <p>15 Q. Well, going back to my question. My question</p> <p>16 was about performance of the particular areas of the</p> <p>17 company that they managed, the corporation that they</p> <p>18 managed. Can you cite to any example or situation where</p> <p>19 the performance of the areas of the corporation that</p> <p>20 were managed by Mr. Spence were superior in performance</p> <p>21 to those managed by Mr. McHugh?</p> <p>22 A. You're managing different -- they're managing</p> <p>23 different operations of the company, so no, I can't.</p> <p>24 Q. You can't compare those?</p> <p>25 A. They're managing completely different</p>	<p>Page 103</p> <p>1 MR. SABA: That's not my question.</p> <p>2 THE WITNESS: Yeah, I will answer that to</p> <p>3 Mr. Spence's intellect and immediate grasp of all</p> <p>4 parts of the banking industry was far superior.</p> <p>5 BY MR. SABA:</p> <p>6 Q. And what objective information do you have to</p> <p>7 base that upon?</p> <p>8 MR. CIOFFI: Objection. Asked and answered.</p> <p>9 He talked about his observations over many, many</p> <p>10 years. You keep repeating the questions hoping you</p> <p>11 will get the answer you want.</p> <p>12 MR. SABA: I'm not asking about his subjective</p> <p>13 observations. I said objective information.</p> <p>14 MR. CIOFFI: His observations are objective.</p> <p>15 MR. SABA: By definition, his observations are</p> <p>16 subjective.</p> <p>17 BY MR. SABA:</p> <p>18 Q. What objective information do you have,</p> <p>19 Mr. Heminger, to in any way indicate that Mr. Spence's</p> <p>20 qualities and the characteristics that you're examining</p> <p>21 were superior to that of Mr. McHugh's?</p> <p>22 A. During this period of time, many transactions</p> <p>23 within the banking industry, many different changes</p> <p>24 within the banking industry throughout Fintech, and, you</p> <p>25 know, digital platforms, and Tim just had, you know, an</p>

<p>Page 104</p> <p>1 unbelievable grasp and understanding and control of -- 2 and vision for not only where the digital platform was 3 going, but any discussion about a -- the competitive 4 landscape, he had a far superior understanding of what 5 is making up the competitive landscape, how Fifth Third 6 is performing versus other banks.</p> <p>7 Q. And, again, that's all from presentations made 8 during board meetings, correct?</p> <p>9 A. Presentations, but my answer is more to off 10 the -- out of the presentation questions and discussions 11 and debate being held within the board, we just don't 12 accept any presentation that's being made by an 13 executive as being -- being the end, and that's all 14 they're going to present. We would have several 15 detailed questions about what's going on in the market? 16 Why is this transaction? Why is this company 17 outperforming? And Tim always had a superior grasp of 18 the entire industry.</p> <p>19 Q. That's all within the board meeting itself, 20 correct?</p> <p>21 A. Correct.</p> <p>22 Q. You reference Mr. Spence's strong ability to 23 build consensus within the company; is that correct?</p> <p>24 A. Did I say that? I'm not sure that I said 25 exactly that, but go on.</p>	<p>Page 106</p> <p>1 about in what ways Mr. Spence's management abilities 2 were superior to Mr. McHugh's, and you indicated four 3 different things in your answer. Superior strategic 4 vision, understood venture capital markets, understood 5 the competition much better, and he's able to build a 6 culture within the company, a culture of working 7 together as one single team. Do you recall that?</p> <p>8 A. Yes, sir.</p> <p>9 Q. With respect to -- we've talked about 10 strategic vision. With respect to understanding venture 11 capital markets, what, if any, objective information or 12 evidence or data do you have that Mr. Spence understood 13 venture capital markets better than Mr. McHugh?</p> <p>14 A. In various presentations that would have been 15 made in the board meetings, Mr. Spence was able to 16 articulate how venture capital and then activism in and 17 around venture capital, that it was affecting the entire 18 banking industry, and I believe that he had a very deep 19 knowledge and understanding of this new change of 20 competition within the banking industry.</p> <p>21 Q. Outside the presentations made by Mr. Spence 22 to the board, do you have any other evidence or data 23 that shows that Mr. Spence understood venture capital 24 markets better than Mr. McHugh did?</p> <p>25 A. No, sir.</p>
<p>Page 105</p> <p>1 Q. Well, correct me if I'm wrong; I'm just trying 2 to understand one of the characteristics that you 3 pointed to within which you felt Mr. Spence was superior 4 to Mr. McHugh?</p> <p>5 A. Yeah, I don't -- you can go back and read it. 6 I don't recall saying "consensus." Maybe I did, I don't 7 recall.</p> <p>8 Q. All right. Okay.</p> <p>9 MR. CIOFFI: Counsel, do you want to finish up 10 your line of questioning because it's well past 11 lunchtime.</p> <p>12 MR. SABA: Certainly. We can go --</p> <p>13 MR. CIOFFI: If you're about ready to 14 conclude, we can conclude. I don't want to --</p> <p>15 MR. SABA: Oh, no, no, I'm not ready to 16 conclude, but we can go off the record and break 17 for lunch, certainly.</p> <p>18 THE VIDEOGRAPHER: The time is 12:55 p.m. We 19 can go off the record.</p> <p>20 (A recess was taken from 12:56 p.m. to 21 1:42 p.m.)</p> <p>22 THE VIDEOGRAPHER: The time is 1:42 p.m. 23 We're back on the record.</p> <p>24 BY MR. SABA:</p> <p>25 Q. Mr. Heminger, before we broke I asked you</p>	<p>Page 107</p> <p>1 MR. CIOFFI: Objection. Asked and answered. 2 Go ahead.</p> <p>3 BY MR. SABA:</p> <p>4 Q. With respect to understanding the competition 5 much better, do you have any evidence, objective -- 6 excuse me, strike that.</p> <p>7 With respect to understanding the competition 8 much better, do you have any objective evidence or data 9 indicating that Mr. Spence's skills were superior to 10 that of Mr. McHugh?</p> <p>11 MR. CIOFFI: Objection. Could you read that 12 back? Are you saying inside or outside the board 13 presentations? Could you read the question back? 14 (The record was read.)</p> <p>15 THE WITNESS: No.</p> <p>16 BY MR. SABA:</p> <p>17 Q. With respect to building a culture within the 18 company, a culture of working together as one single 19 team, do you have any objective evidence or information 20 indicating that Mr. Spence's skills were superior to 21 Mr. McHugh's?</p> <p>22 A. Yes. My observations of the culture within 23 the boardroom.</p> <p>24 Q. Outside the culture within the boardroom, 25 anything else?</p>

<p>Page 108</p> <p>1 A. No.</p> <p>2 Q. And the team you're referring to, is that the</p> <p>3 team of employees and employees of the bank that would</p> <p>4 be under Mr. Spence?</p> <p>5 A. No.</p> <p>6 Q. What team are you referring to?</p> <p>7 A. The enterprise team.</p> <p>8 Q. Did you interview the enterprise team about</p> <p>9 their opinions regarding Mr. Spence?</p> <p>10 A. No.</p> <p>11 Q. Did you interview the enterprise team</p> <p>12 regarding their opinions regarding Mr. McHugh?</p> <p>13 A. No.</p> <p>14 Q. Did you ever ask any of the enterprise team</p> <p>15 about their ability to work with Mr. McHugh as one team?</p> <p>16 A. No.</p> <p>17 Q. Did you ever ask any of the enterprise team</p> <p>18 about their ability to work with Mr. Spence as one team?</p> <p>19 A. No.</p> <p>20 Q. Did you ever review any of the employee</p> <p>21 engagement scores?</p> <p>22 A. I don't recall.</p> <p>23 Q. Do you know what the employee engagement</p> <p>24 scores are?</p> <p>25 A. I know what the term means, yes.</p>	<p>Page 110</p> <p>1 A. I don't know.</p> <p>2 Q. Mr. Heminger --</p> <p>3 A. Yes.</p> <p>4 Q. -- referring you back to Exhibit 10, and the</p> <p>5 second page of that exhibit, which is Bates stamped</p> <p>6 Fifth Third McHugh 007109, below the section titled</p> <p>7 "Executive Session With CEO," it says, "Following</p> <p>8 conclusion of the executive performance review</p> <p>9 discussion, Mr. Shaffer departed the meeting and the</p> <p>10 directors went into executive session with</p> <p>11 Mr. Carmichael. During this session, there was a</p> <p>12 discussion of key talent management and succession</p> <p>13 planning concerns, as well as a discussion of key</p> <p>14 strategic priorities that would be discussed in the</p> <p>15 general session."</p> <p>16 Do you see the area I'm referring to?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Do you recall what the discussions were</p> <p>19 regarding succession planning concerns?</p> <p>20 A. I do not.</p> <p>21 Q. Do you recall if there were minutes taken</p> <p>22 during that executive session?</p> <p>23 A. I do not.</p> <p>24 Q. As of the conclusion of the December 17, 2019</p> <p>25 board meeting, was there a definitive determination made</p>
<p>Page 109</p> <p>1 Q. And what do those show?</p> <p>2 A. It's an array of questions on how an</p> <p>3 individual performance on many different attributes.</p> <p>4 Q. Do you recall ever seeing employee engagement</p> <p>5 scores for Fifth Third Bank?</p> <p>6 A. I don't recall, no.</p> <p>7 Q. Did you ever receive -- excuse me, strike</p> <p>8 that.</p> <p>9 Did you ever see any income statements or</p> <p>10 profit and loss statements for any areas of Fifth Third</p> <p>11 that were managed by Mr. McHugh?</p> <p>12 A. I certainly would have.</p> <p>13 Q. And did you see any income statements or</p> <p>14 profit and loss statements for the areas of Fifth Third</p> <p>15 Bank that were managed by Mr. Spence?</p> <p>16 A. Yes, I would have.</p> <p>17 Q. And did you ever compare the two?</p> <p>18 A. I remember reviewing them and seeing them, but</p> <p>19 doing a comparative analysis, no.</p> <p>20 Q. As you sit here today, are you able to say,</p> <p>21 based upon the income statements or profit and loss</p> <p>22 statements for the respective areas that Mr. McHugh and</p> <p>23 Mr. Spence managed, that Mr. McHugh's areas performed</p> <p>24 better than Mr. - excuse me, that Mr. Spence's areas</p> <p>25 performed better than Mr. McHugh's?</p>	<p>Page 111</p> <p>1 regarding who would succeed Mr. Carmichael as president</p> <p>2 and/or CEO of Fifth Third?</p> <p>3 A. I don't recall the exact timing.</p> <p>4 Q. Do you recall if any decision had been made as</p> <p>5 of the end of that meeting?</p> <p>6 A. As I just stated, I don't know the exact</p> <p>7 timing of when that decision was made.</p> <p>8 (Plaintiff's Exhibit 11 is marked for</p> <p>9 identification.)</p> <p>10 BY MR. SABA:</p> <p>11 Q. Mr. Heminger, I've just handed you what has</p> <p>12 been marked as Exhibit Number 11. Can you identify that</p> <p>13 for me, please?</p> <p>14 A. It's Fifth Third Bancorp Minutes of Meeting of</p> <p>15 the Board of Directors, February 25, 2020.</p> <p>16 Q. And were you in attendance at that meeting?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Was that meeting presided over by</p> <p>19 Mr. Carmichael?</p> <p>20 A. Yes, sir.</p> <p>21 Q. You would agree with me that Exhibit 11 is</p> <p>22 Bates stamped Fifth Third McHugh 212523 through Fifth</p> <p>23 Third McHugh 212532?</p> <p>24 A. Yes.</p> <p>25 Q. Based upon Exhibit Number 11, are you able to</p>

<p>Page 112</p> <p>1 determine whether or not there was any discussion of</p> <p>2 succession timelines and candidates for the position of</p> <p>3 president during the February 25, 2020 board meeting?</p> <p>4 A. I do not see any.</p> <p>5 Q. Based upon Exhibit Number 11, are you able to</p> <p>6 tell me or identify everyone who presented information</p> <p>7 at the February 25, 2020 board meeting?</p> <p>8 A. Mr. Carmichael. Mr. King, who was an outside</p> <p>9 consultant with FW Cook, Mr. Spence, Mr. Lamb,</p> <p>10 Mr. Leonard, Mr. Tazun, Ms. Zaunbrecher. That's all</p> <p>11 that I can ascertain from this document.</p> <p>12 Q. Are those all the people that made</p> <p>13 presentations at the February 25, 2020 board meeting?</p> <p>14 A. I don't know.</p> <p>15 (Plaintiff's Exhibit 12 is marked for</p> <p>16 identification.)</p> <p>17 BY MR. SABA:</p> <p>18 Q. Mr. Heminger, I've handed you what's been</p> <p>19 marked as Exhibit Number 12. Can you mark that for</p> <p>20 me -- excuse me, can you identify that for me, please?</p> <p>21 A. Fifth Third Bancorp Minutes of Meeting of the</p> <p>22 Board of Directors, September 17, 2019.</p> <p>23 Q. You were in attendance at that meeting; is</p> <p>24 that correct?</p> <p>25 A. Yes.</p>	<p>Page 114</p> <p>1 Q. You're saying that's true for every meeting?</p> <p>2 A. Most generally.</p> <p>3 Q. Would the board meeting -- would the board</p> <p>4 meeting minutes indicate whether or not that's accurate?</p> <p>5 A. It should.</p> <p>6 Q. But you would need a complete set of the board</p> <p>7 meeting minutes to determine that, correct?</p> <p>8 A. Yeah. I mean, it should -- yes, it should be</p> <p>9 stated in a complete set of the board meeting minutes,</p> <p>10 yes.</p> <p>11 (Plaintiff's Exhibit 13 is marked for</p> <p>12 identification.)</p> <p>13 BY MR. SABA:</p> <p>14 Q. Mr. Heminger, I've handed you what's been</p> <p>15 marked as Exhibit Number 13. Can you identify that for</p> <p>16 me, please?</p> <p>17 A. That's Fifth Third Bank Minutes of Meeting of</p> <p>18 the Board of Directors, September 17, 2019.</p> <p>19 Q. This took place at the same time as the board</p> <p>20 of directors meeting for Fifth Third Bancorp on that</p> <p>21 date; is that correct?</p> <p>22 A. Yes.</p> <p>23 Q. And as indicated before, you were in</p> <p>24 attendance at the meeting and Mr. Carmichael presided</p> <p>25 over the meeting; is that right?</p>
<p>Page 113</p> <p>1 Q. And Mr. Carmichael presided over that meeting;</p> <p>2 is that correct?</p> <p>3 A. Yes.</p> <p>4 Q. Exhibit 12 is Bates stamped Fifth Third McHugh</p> <p>5 212513 through 212516; is that correct?</p> <p>6 A. Yes.</p> <p>7 Q. Based upon Exhibit 12, are you able to tell me</p> <p>8 whether or not there was any discussion regarding</p> <p>9 succession timelines and candidates for the position of</p> <p>10 president during the September 17th, 2019 board meeting</p> <p>11 for Fifth Third Bancorp?</p> <p>12 A. No.</p> <p>13 Q. Based upon Exhibit Number 12, are you able to</p> <p>14 identify for me all of the presenters at the</p> <p>15 September 17, 2019 Fifth Third Bancorp meeting?</p> <p>16 A. Mr. Carmichael, Mr. Spence, Mr. Anderson,</p> <p>17 Mr. Schramm. Did I say Mr. Tazun? Mr. McHugh.</p> <p>18 Mr. Forrest. Okay. That's all.</p> <p>19 Q. Based upon Exhibit Number 12, are you able to</p> <p>20 tell me whether or not those were all the presenters</p> <p>21 and/or presentations made at the September 17, 2019</p> <p>22 board meeting for Fifth Third Bancorp?</p> <p>23 A. I can't, but presumably whenever it says</p> <p>24 management present, generally everyone will make some</p> <p>25 sort of a presentation.</p>	<p>Page 115</p> <p>1 A. Right.</p> <p>2 Q. Exhibit Number 13 is Bates stamped Fifth Third</p> <p>3 McHugh 212517 through Fifth Third McHugh 212522; is that</p> <p>4 correct?</p> <p>5 A. Yes.</p> <p>6 Q. Based upon Exhibit Number 13, are you able to</p> <p>7 determine whether or not there was any discussion of</p> <p>8 succession timelines and candidates for the position of</p> <p>9 president during the September 17, 2019 board meeting</p> <p>10 for Fifth Third Bank?</p> <p>11 A. I do not see any.</p> <p>12 (Plaintiff's Exhibit 14 is marked for</p> <p>13 identification.)</p> <p>14 BY MR. SABA:</p> <p>15 Q. Mr. Heminger, I've handed you what has been</p> <p>16 marked as Exhibit Number 14. Can you identify that for</p> <p>17 me, please?</p> <p>18 A. Fifth Third Bank, National Association Minutes</p> <p>19 of Meeting of the Board of Directors, February 25, 2022.</p> <p>20 Q. And you were present for that meeting,</p> <p>21 correct?</p> <p>22 A. Yes.</p> <p>23 Q. And Mr. Carmichael presided over that meeting;</p> <p>24 is that right?</p> <p>25 A. Yes.</p>

<p>1 Q. Exhibit Number 14 is Bates stamped Fifth Third 2 McHugh 212533 through Fifth Third McHugh 212538; is that 3 correct? 4 A. That's correct. 5 Q. Based upon Exhibit Number 14, can you 6 determine whether or not there was any discussion 7 regarding timeline or candidates for succession planning 8 for president for Fifth Third Bank? 9 A. No. 10 Q. Based upon Exhibit Number 14, are you able to 11 identify all of the presenters that made presentations 12 at the February 25, 2020 board meeting for Fifth Third 13 Bank, National Association? 14 A. Mr. Carmichael, Mr. Spence, Mr. Tazun, 15 Mr. Leonard, Ms. Zaunbrecher. That appears to be it. 16 Q. Were you able to determine whether or not that 17 was all the people who made presentations at the 18 February 25, 2020 board meeting for Fifth Third Bank, 19 National Association? 20 A. No. 21 (Plaintiff's Exhibit 15 is marked for 22 identification.) 23 BY MR. SABA: 24 Q. Mr. Heminger, I've handed you what has been 25 marked as Exhibit Number 14. Can you identify that for</p>	<p>Page 116</p>	<p>1 with COVID after March of 2020? 2 A. I just -- I don't know the exact dates. I do 3 recall we had several meetings by phone due to the 4 pandemic, yes. 5 Q. And this meeting would have taken place on 6 April 14, 2020; is that right, and Mr. Carmichael 7 presided over the meeting? 8 A. That's correct. 9 Q. Based upon Exhibit Number 15, are you able to 10 tell me whether or not there was any discussion 11 regarding succession timelines and candidates for the 12 position of president of Fifth Third on April 14, 2020? 13 A. No. 14 Q. And with respect to this particular board 15 meeting and the directors being present by telephone, 16 was that a video teleconference? 17 A. I believe it was. 18 Q. Based upon Exhibit Number 15, are you able to 19 determine who the presenters were at the April 14, 2020 20 board meeting for Fifth Third Bancorp? 21 A. Mr. Carmichael, Mr. McCallister on behalf of 22 the human capital compensation committee. 23 Ms. Zaunbrecher. And Ms. Somalya. 24 Q. Based upon Exhibit Number 15, are you able to 25 determine whether or not that was everyone who made a</p>	<p>Page 118</p>
<p>1 me, please? 2 A. Fifth Third Bancorp Minutes of Meeting of the 3 Board of Directors, April 14, 2020. 4 MR. SMITH: That might be 15. 5 MR. SABA: Excuse me, Exhibit 15, I misspoke. 6 BY MR. SABA: 7 Q. Correction. That's Exhibit 15; is that 8 correct, Mr. Heminger? 9 A. Yes. 10 Q. Thank you. Exhibit 15 is Bates stamped Fifth 11 Third McHugh 212539 through Fifth Third McHugh 212543; 12 is that correct? 13 A. Correct. 14 Q. And you attended that meeting by telephone; is 15 that correct? 16 A. That's correct. 17 Q. This would have been post COVID; is that 18 right? Let me clarify my question. 19 A. I don't know if it was post COVID or not. 20 MR. CIOFFI: Are you making a medical 21 determination? 22 MR. SABA: No. Let me clarify my question. 23 BY MR. SABA: 24 Q. Do you recall that there was a period of time 25 where the meetings were done by phone because of issues</p>	<p>Page 117</p>	<p>1 presentation at the April 14, 2020 board meeting for 2 Fifth Third Bancorp? 3 A. No. 4 (Plaintiff's Exhibit 16 is marked for 5 identification.) 6 BY MR. SABA: 7 Q. Mr. Heminger, I've handed you what has been 8 marked as Exhibit Number 16. Can you identify is that 9 for me, please? 10 A. Fifth Third Bank, National Association Minutes 11 of Meeting of the Board of Directors, April 14, 2020. 12 Q. Exhibit Number 16 is Bates stamped Fifth Third 13 McHugh 212544 through 212546; is that correct? 14 A. That's correct. 15 Q. Based upon the minutes for Fifth Third Bank, 16 National Association on April 14, 2020, are you able to 17 determine whether or not there was any discussion 18 regarding succession timelines and candidates for the 19 position of president during that April 14, 2020 20 meeting? 21 A. No. 22 Q. Based upon Exhibit Number 16, are you able to 23 determine who all of the presenters were at that 24 meeting? 25 A. Mr. Carmichael. Ms. Somalya. I believe</p>	<p>Page 119</p>

<p>1 that's it.</p> <p>2 Q. Are you able to determine whether or not those</p> <p>3 were all the presenters who made a presentation at the</p> <p>4 April 14, 2020 meeting?</p> <p>5 A. I don't know.</p> <p>6 (Plaintiff's Exhibit 17 is marked for</p> <p>7 identification.)</p> <p>8 BY MR. SABA:</p> <p>9 Q. Mr. Heminger, I've handed you what's been</p> <p>10 marked as Exhibit Number 17. Can you identify that for</p> <p>11 me, please?</p> <p>12 A. Fifth Third Bancorp Minutes of Meeting of the</p> <p>13 Board of Directors, June 16, 2020.</p> <p>14 Q. Based upon Exhibit Number 17, are you able to</p> <p>15 determine whether or not there was any discussion</p> <p>16 regarding CEO succession during that meeting?</p> <p>17 A. Under page 28, it says that the "CEO</p> <p>18 succession key executive departures were discussed."</p> <p>19 Q. Do you recall specifically what was discussed</p> <p>20 concerning CEO succession and key executive departures</p> <p>21 during an executive session of the full board on</p> <p>22 June 16, 2020?</p> <p>23 A. I do not.</p> <p>24 Q. Would that also be true with respect to the</p> <p>25 executive session with independent directors only, where</p>	<p>Page 120</p> <p>1 marked as Exhibit Number 18. Can you identify that for</p> <p>2 me, please?</p> <p>3 A. Fifth Third Bank, National Association</p> <p>4 Minutes of Meeting of the Board of Directors on</p> <p>5 June 16, 2020.</p> <p>6 Q. This took place simultaneous with the board of</p> <p>7 directors meeting for Fifth Third Bancorp; is that</p> <p>8 correct?</p> <p>9 A. That's correct.</p> <p>10 Q. Exhibit Number 18 is Bates stamped Fifth Third</p> <p>11 McHugh 212549 through Fifth Third McHugh 212556; is that</p> <p>12 correct?</p> <p>13 A. That's correct.</p> <p>14 Q. Referring to page Fifth Third McHugh 212556,</p> <p>15 there's again a reference to the executive session of</p> <p>16 the full board and executive session of independent</p> <p>17 directors only, both of which indicate there was a</p> <p>18 discussion of CEO succession and key executive</p> <p>19 departures; do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. Is your answer the same as it was with respect</p> <p>22 to the board of directors meeting minutes for -- excuse</p> <p>23 me, for Exhibit Number 17, do you recall what was</p> <p>24 discussed during those executive sessions?</p> <p>25 A. I do not.</p>
<p>Page 121</p> <p>1 it again indicates that CEO succession key executive</p> <p>2 departures were discussed?</p> <p>3 A. I don't recall.</p> <p>4 Q. You don't recall what was discussed during</p> <p>5 that time period either; is that correct?</p> <p>6 A. No.</p> <p>7 Q. And just to clarify, the June 16, 2020</p> <p>8 meeting, you, again, attended by phone; is that correct?</p> <p>9 A. That's correct.</p> <p>10 Q. And Mr. Carmichael presided over that meeting;</p> <p>11 is that right?</p> <p>12 A. That's correct.</p> <p>13 Q. Based upon Exhibit Number 17, are you able to</p> <p>14 tell me who the presenters were at that June 16, 2020</p> <p>15 board meeting for Fifth Third Bancorp?</p> <p>16 A. Mr. Carmichael, and then Marsha Williams in</p> <p>17 the executive session.</p> <p>18 Q. Does Exhibit Number 17 indicate who all the</p> <p>19 presenters were at the June 16, 2020 meeting for Fifth</p> <p>20 Third Bancorp?</p> <p>21 A. I don't know.</p> <p>22 (Plaintiff's Exhibit 18 is marked for</p> <p>23 identification.)</p> <p>24 BY MR. SABA:</p> <p>25 Q. Mr. Heminger, I've handed you what has been</p>	<p>Page 123</p> <p>1 Q. Based upon the -- strike that.</p> <p>2 Based upon Exhibit Number 18, are you able to</p> <p>3 identify who made presentations during the June 16, 2020</p> <p>4 meeting for Fifth Third Bank National Association?</p> <p>5 A. Mr. Carmichael, Mr. Spence, Ms. Garrett,</p> <p>6 Mr. Lavender, Mr. McHugh, Mr. Spence, Ms. Somalya, and</p> <p>7 Ms. Williams.</p> <p>8 Q. Based upon Exhibit Number 18, are you able to</p> <p>9 determine whether that is all of the presenters who made</p> <p>10 presentations at the June 16, 2020 board meeting for</p> <p>11 Fifth Third Bank, National Association?</p> <p>12 A. I don't know.</p> <p>13 (Plaintiff Exhibit 19 is marked for</p> <p>14 identification.)</p> <p>15 BY MR. SABA:</p> <p>16 Q. Mr. Heminger, I've handed you what has been</p> <p>17 marked as Exhibit Number 19. Can you identify that for</p> <p>18 me, please?</p> <p>19 A. Fifth Third Bancorp Minutes of Meeting of the</p> <p>20 Board of Directors, September 21, 2020.</p> <p>21 Q. And you were present at that meeting in</p> <p>22 person; is that correct?</p> <p>23 A. That's correct.</p> <p>24 Q. And Mr. Carmichael presided over that meeting;</p> <p>25 is that correct?</p>

<p>1 A. That's correct.</p> <p>2 Q. Exhibit Number 19 is Bates stamped Fifth Third</p> <p>3 McHugh 212557 through Fifth Third McHugh 212560; is that</p> <p>4 correct?</p> <p>5 A. Correct.</p> <p>6 Q. Are you able to determine whether or not there</p> <p>7 was any discussion regarding CEO or president succession</p> <p>8 planning during the September 21, 2020 board of</p> <p>9 directors meeting for Fifth Third Bancorp?</p> <p>10 MR. CIOFFI: Are you asking based on this</p> <p>11 document or his recollection?</p> <p>12 MR. SABA: I'm asking based on this document.</p> <p>13 THE WITNESS: I'm sorry. Could you rephrase</p> <p>14 that, please?</p> <p>15 MR. SABA: Certainly.</p> <p>16 BY MR. SABA:</p> <p>17 Q. Based upon Exhibit Number 19, are you able to</p> <p>18 determine whether or not there were any discussions</p> <p>19 regarding the CEO or president succession at Fifth Third</p> <p>20 Bank during the September 21, 2020 board of directors</p> <p>21 meeting for Fifth Third Bancorp?</p> <p>22 A. I did see an indication for president and CEO</p> <p>23 competency model, and I'm trying to read if there were</p> <p>24 any discussions inside of that note, but I do not see</p> <p>25 any. So no.</p>	<p>Page 124</p> <p>1 does it appear that president and chief executive</p> <p>2 officer succession planning was discussed during that</p> <p>3 board meeting?</p> <p>4 A. Yes.</p> <p>5 Q. Did you have a conference call with Greg</p> <p>6 Carmichael sometime between August 18, 2020 and</p> <p>7 September 21, 2020, to discuss the upcoming succession</p> <p>8 discussion at the September 21, 2020 board meeting?</p> <p>9 A. I don't recall.</p> <p>10 Q. Under Talent Management, the second sentence</p> <p>11 reads, "Mr. Shaffer began by reminding the directors of</p> <p>12 prior discussions related to executive succession</p> <p>13 planning, including discussions related to Mr. Spence as</p> <p>14 a possible president and chief executive officer</p> <p>15 successor to Mr. Carmichael."</p> <p>16 Do you see that?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Do you know which prior discussions</p> <p>19 Mr. Shaffer was reminding the board of?</p> <p>20 A. I would -- I believe it would be, based on</p> <p>21 those documents we reviewed earlier today, on our</p> <p>22 different talent -- executive talent management updates</p> <p>23 that we would review.</p> <p>24 Q. Do you know who RHR International -- excuse</p> <p>25 me. Do you know what RHR International is?</p>
<p>Page 125</p> <p>1 (Plaintiff's Exhibit 20 is marked for</p> <p>2 identification.)</p> <p>3 BY MR. SABA:</p> <p>4 Q. Mr. Heminger, I've handed you what's been</p> <p>5 marked as Exhibit Number 20. Can you identify that for</p> <p>6 me, please?</p> <p>7 A. Fifth Third Bank, National Association Minutes</p> <p>8 of Meeting of the Board of Directors, September 21,</p> <p>9 2020.</p> <p>10 Q. And this board of directors meeting at Fifth</p> <p>11 Third Bank, National Association took place</p> <p>12 simultaneously with the meeting for Fifth Third Bancorp;</p> <p>13 is that correct?</p> <p>14 A. Yes.</p> <p>15 Q. As you previously indicated, you were present</p> <p>16 at that meeting; is that right?</p> <p>17 A. Yes.</p> <p>18 Q. And Mr. Carmichael presided over that meeting;</p> <p>19 is that right?</p> <p>20 A. Yes.</p> <p>21 Q. Based upon review -- let me clarify. Exhibit</p> <p>22 Number 20 is Bates stamped Fifth Third McHugh 212561</p> <p>23 through Fifth Third McHugh 212565; is that correct?</p> <p>24 A. Correct.</p> <p>25 Q. Based upon your review of Exhibit Number 20,</p>	<p>Page 127</p> <p>1 A. You need to -- you need to direct your voice</p> <p>2 this way.</p> <p>3 Q. I'm sorry. I apologize. You indicated that</p> <p>4 before.</p> <p>5 Do you know what RHR International is?</p> <p>6 A. Yes.</p> <p>7 Q. What is RHR International?</p> <p>8 A. They're a consulting firm that is renowned for</p> <p>9 their assessment of executive management.</p> <p>10 Q. Outside of Fifth Third, have you ever used RHR</p> <p>11 International?</p> <p>12 A. I believe I used them once at Marathon.</p> <p>13 Q. And was that to locate your replacement?</p> <p>14 A. No. That was a -- just an executive that I</p> <p>15 was doing some assessment on.</p> <p>16 Q. In the second full paragraph below Talent</p> <p>17 Management, the third sentence reads, "Mr. Shaffer also</p> <p>18 reminded the board members of the succession planning</p> <p>19 discussion at the June 2020 board meeting in which the</p> <p>20 board approved the CEO profile to be utilized by</p> <p>21 Mr. Beaudin and Mr. Evans to assess Mr. Spence."</p> <p>22 Do you see that sentence?</p> <p>23 A. I do.</p> <p>24 Q. Do you know what they're referring to with</p> <p>25 respect to the CEO profile?</p>

<p>Page 128</p> <p>1 A. Yes. We discussed at one of our meetings what 2 we believed the attributes and the -- and the profile, 3 to use that term, profile should be as we considered the 4 next CEO.</p> <p>5 Q. Is it your understanding that Mr. Spence was 6 the only individual assessed by RHR for the president 7 and CEO positions?</p> <p>8 A. I don't know.</p> <p>9 Q. Did you ever see an assessment for anybody 10 other than Mr. Spence that was made by RHR?</p> <p>11 A. No.</p> <p>12 Q. Are you aware if anyone made a determination 13 that Mr. Spence would be the only person assessed by 14 RHR?</p> <p>15 A. I don't, no. 16 (Plaintiff's Exhibit 21 is marked for 17 identification.)</p> <p>18 BY MR. SABA:</p> <p>19 Q. Mr. Heminger, I handed you what's marked as 20 Exhibit Number 21. Can you identify that for me, 21 please?</p> <p>22 A. It's an email from Bob Shaffer to Guy Beaudin 23 of RHR International and Chuck Evans pertaining to the 24 CEO profile draft.</p> <p>25 Q. And specifically, if we stop -- excuse me. If</p>	<p>Page 130</p> <p>1 Q. All right. And just to clarify, there's an 2 initial email that is three pages, Bates stamped Fifth 3 Third McHugh 001071 through 001073; is that correct?</p> <p>4 A. Correct.</p> <p>5 Q. Then attached to the email are documents that 6 are Bates stamped Fifth Third McHugh 001013 through 7 001024; is that correct?</p> <p>8 A. That's correct.</p> <p>9 Q. Turning to the page that's Bates stamped Fifth 10 Third McHugh 001013, can you identify what this document 11 is for me, please?</p> <p>12 A. It's a draft of what's called "The Winning 13 Formula for Fifth Third Bank President and Chief 14 Executive Officer."</p> <p>15 Q. Do you recall if this is the CEO profile 16 that's being referenced in the email?</p> <p>17 A. Can I look at it?</p> <p>18 Q. Yes.</p> <p>19 A. Yes, it appears so.</p> <p>20 Q. And referring to McHugh 001019, does 21 that appear to be the final version of the CEO 22 profile?</p> <p>23 A. That's what it illustrates.</p> <p>24 Q. Going back to my earlier question, would you 25 have reviewed the draft and/or final version of the CEO</p>
<p>Page 129</p> <p>1 we start at the top of the first page of Exhibit 21, 2 which is Bates stamped Fifth Third McHugh 001071; is 3 that correct?</p> <p>4 A. Yes.</p> <p>5 Q. Looking at that, that's an email from Bob 6 Shaffer to Mr. Beaudin and Chuck Evans, correct?</p> <p>7 A. Right.</p> <p>8 Q. And that is dated July 23, 2020; is that 9 right?</p> <p>10 A. Correct.</p> <p>11 Q. And the attachment that's indicated is for the 12 Fifth Third CEO profile final; is that right?</p> <p>13 A. Correct.</p> <p>14 Q. The email that Mr. Shaffer sends says, "Guy - 15 hope all is well. I have reviewed the updated profile 16 with Greg and with the Human Capital & Compensation 17 Committee members."</p> <p>18 And by "Greg," is he referring to Greg 19 Carmichael there?</p> <p>20 A. Yes.</p> <p>21 Q. And with respect to the Human Capital and 22 Compensation Committee members, did he review this 23 document with you?</p> <p>24 A. I've got to look at the document to refresh my 25 memory.</p>	<p>Page 131</p> <p>1 profile that's attached to -- as part of Exhibit 21?</p> <p>2 A. As a member of the compensation committee 3 meeting, yes.</p> <p>4 Q. Did you make any changes to the CEO profile?</p> <p>5 A. I don't recall.</p> <p>6 Q. And what was your understanding of the purpose 7 of the CEO profile?</p> <p>8 A. Well, as the board is reviewing, you know, 9 succession planning alternatives, you start with this is 10 the foundation of what you're looking for, the 11 attributes of a CEO successor. This is the foundation 12 of what you're looking for as well as those key elements 13 that you want to see the next CEO be able to build upon 14 within the Fifth Third Bank.</p> <p>15 Q. Referring you back to Exhibit 20.</p> <p>16 A. Okay.</p> <p>17 Q. And I'm again referring to the second full 18 paragraph under Talent Management on the first page of 19 Exhibit 20, and the last sentence of that paragraph 20 says, "Mr. Shaffer then asked Mr. Beaudin to describe 21 the assessment process utilized by RHR International to 22 assess Mr. Spence and to review the assessment report 23 distributed to the directors at today's meeting."</p> <p>24 Do you see that?</p> <p>25 A. Yes.</p>

<p>1 (Plaintiff's Exhibits 22 and Exhibit 23 are 2 marked for identification.) 3 MR. SABA: This is 23. The first one I handed 4 you is 22. 5 BY MR. SABA: 6 Q. Mr. Heminger, I just handed you two exhibits, 7 one marked as Exhibit Number 22, the other one marked as 8 Exhibit Number 23. Can you identify Exhibit Number 22 9 for me, please? 10 A. Exhibit 22 is Board Summary of Tim Spence, 11 provided by RHR International. 12 Q. And that document is Bates stamped Fifth Third 13 McHugh 001033 through Fifth Third McHugh 001040; is that 14 correct? 15 A. Right. 16 Q. Can you also identify Exhibit Number 23 for 17 me, please? 18 A. Exhibit 23 is Executive Assessment Development 19 Report provided by RHR International for Tim Spence as 20 Executive Vice President and Head of Consumer Bank, 21 Payments, and Strategies, Fifth Third Bank, July 31st, 22 2020. 23 Q. And Exhibit Number 23 is Bates stamped Fifth 24 Third McHugh 000954 through Fifth Third McHugh 000976; 25 is that correct?</p>	Page 132	<p>1 A. I don't recall the exact date, but presumably. 2 Q. Have you seen Exhibit Number 23 before? 3 A. Yes, I believe I recall seeing this. 4 Q. And do you recall seeing it at the 5 September 21st, 2020 board meeting? 6 A. I don't recall the exact date, but presumably. 7 Q. Referring you back to Exhibit 20 and to the 8 second full paragraph again under Talent Management? 9 A. Uh-huh. 10 Q. And within that paragraph, the second to last 11 sentence of the paragraph reads, "Mr. Shaffer noted that 12 the CEO profile identified essential behaviors related 13 to business management, leadership, interpersonal skills 14 and personal attributes deemed critical to assess Fifth 15 Third Bank president and CEO successor candidates." 16 Is that correct? 17 A. Yes. 18 Q. Do you agree with that statement? 19 A. I do. 20 Q. If you would turn to the second page of 21 Exhibit 20, please, which is Bates stamped Fifth Third 22 McHugh 212562. At the top of the page, the paragraph 23 that continues over from the first page, the last 24 sentence reads, "Lastly, Mr. Beaudin reviewed the 25 development goals for Mr. Spence included in the</p>	Page 134
<p>1 A. Yes. 2 Q. With respect to the assessment report that was 3 distributed to the directors at the September 21st, 2020 4 meeting, are you able to determine whether or not the 5 assessment report that was distributed is either Exhibit 6 22 or 23 or both? 7 A. The date again, please? 8 Q. This is at the September 21st, 2020 meeting. 9 It's referenced in the minutes that Mr. Beaudin was 10 going to describe the assessment report distributed to 11 the directors at today's meeting. What I'm trying to 12 determine is do either Exhibit 22 or 23 or both 13 constitute the report that was distributed to the 14 directors at the September 21st, 2020 meeting? 15 A. Can I go back and look at these minutes? 16 Q. Sure. The minutes are Exhibit 20. 17 A. 20? 18 Q. 20. 19 A. It appears as though that's the case, yes. 20 Q. Well, my question is -- let me ask you first, 21 sir, have you seen Exhibit 22 before? 22 A. I recall seeing it, 22, I recall seeing it a 23 while back, yes. 24 Q. Do you recall seeing it at that 25 September 21st, 2020 board meeting?</p>	Page 133	<p>1 assessment report." 2 Do you see that? 3 A. Yes. 4 Q. What is your understanding of what those 5 development goals were? And if need be, you can refer 6 to the assessment report. 7 A. I'd probably have to refer to that. 8 Q. Go ahead. 9 A. We need to take a time out. 10 MR. SABA: Go off the record. 11 THE VIDEOGRAPHER: The time is 2:45 p.m. 12 (A recess was taken from 2:46 p.m. to 13 2:58 p.m.) 14 THE VIDEOGRAPHER: The time is 2:57 p.m. We 15 are back on the record. 16 BY MR. SABA: 17 Q. Mr. Heminger, before we broke, we were 18 discussing the development recommendations for 19 Mr. Spence. I was asking you about if you recalled 20 those and what they were. You indicated that you'd have 21 to refer to the report. If you can go ahead and refer 22 to the report that's Bates stamped as Exhibit Number 23 23 and I believe beginning on Fifth Third McHugh 000971. 24 Can you identify the development recommendations for me? 25 A. They're outlined here. "To slow down, avoid</p>	Page 135

<p>1 overwhelming others with too many change initiatives,</p> <p>2 and sustain focus across all initiatives. And gain</p> <p>3 greater comfort in having difficult conversations and</p> <p>4 holding others accountable."</p> <p>5 Q. Do you disagree with any of the development</p> <p>6 recommendations that RHR gave regarding Mr. Spence?</p> <p>7 A. I understand. I can't say I agree or</p> <p>8 disagree.</p> <p>9 Q. Why is that?</p> <p>10 A. I'm sorry?</p> <p>11 Q. Why can't you say if you agree or disagree?</p> <p>12 A. "Sustain focus across all initiatives." I</p> <p>13 find that as a very positive attribute. I believe</p> <p>14 "avoid overwhelming others with too many change</p> <p>15 initiatives," I believe that's a developmental process</p> <p>16 that as you're trying to assimilate all of the work to</p> <p>17 be done, you learn over time, you know, where to really</p> <p>18 identify your priorities. So I agree with some, but I</p> <p>19 think some of those are positive.</p> <p>20 Q. What's your read of when it says "sustain</p> <p>21 focus across all initiatives"?</p> <p>22 MR. CIOFFI: Objection to the form of the</p> <p>23 question.</p> <p>24 MR. SABA: I'll clarify the question.</p> <p>25 MR. CIOFFI: If you have an opinion.</p>	<p>Page 136</p> <p>1 focused on many things, and he has sustained focus</p> <p>2 on many things is how I read it.</p> <p>3 BY MR. SABA:</p> <p>4 Q. Do you read all the development</p> <p>5 recommendations for Mr. Spence as positives for him?</p> <p>6 A. I'll have to read the rest of them.</p> <p>7 Q. Go ahead.</p> <p>8 A. Yes. I can read that -- I can read positives</p> <p>9 into them, and then areas that he certainly can be</p> <p>10 coached to improve.</p> <p>11 (Plaintiff's Exhibit 24 is marked for</p> <p>12 identification.)</p> <p>13 BY MR. SABA:</p> <p>14 Q. Mr. Heminger, I've handed you what's been</p> <p>15 marked as Exhibit Number 24. Can you identify that for</p> <p>16 me, please?</p> <p>17 A. It's a memo of June 8, 2020 from Bob Shaffer</p> <p>18 to Greg Carmichael, subject of "Guy Conversation on the</p> <p>19 Winning Formula for the CEO Profile."</p> <p>20 Q. You said a memo. It's actually an email; is</p> <p>21 that a fair statement?</p> <p>22 A. Yes.</p> <p>23 Q. And under key highlights and next steps, the</p> <p>24 first bullet point reads, "Guy agrees that if Tim is</p> <p>25 'the' successor, don't add Tayfun and Phil formerly.</p>
<p>1 MR. SABA: I'll clarify the question.</p> <p>2 BY MR. SABA:</p> <p>3 Q. Mr. Heminger, are you saying you read that as</p> <p>4 Mr. Spence sustains focus across all initiatives or</p> <p>5 that he needs to sustain focus across all initiatives?</p> <p>6 A. I read it that he does sustain focus across</p> <p>7 all initiatives, highly focused.</p> <p>8 Q. Do you see the second bullet point next to</p> <p>9 sustain focus across all initiatives?</p> <p>10 A. Yes.</p> <p>11 Q. And do you see that reads, "Timothy needs to</p> <p>12 ensure he evenly distributes his focus across all</p> <p>13 the activities his direct reports are pursuing"; is that</p> <p>14 correct?</p> <p>15 A. Correct.</p> <p>16 Q. "He needs to take the time to check in and ask</p> <p>17 about progress"; do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Wouldn't that indicate to you that he needs to</p> <p>20 improve on sustaining focus across all initiatives, not</p> <p>21 that he has it?</p> <p>22 MR. CIOFFI: Objection. He gave you his</p> <p>23 interpretation, now you're arguing with him to</p> <p>24 adopt yours. You may answer.</p> <p>25 THE WITNESS: I read it that, yes, he's very</p>	<p>Page 137</p> <p>1 Although, he would recommend, at a minimum, we discuss</p> <p>2 with Marsha that she/the board is okay with only having</p> <p>3 Tim assessed by Guy. He said he has seen a few boards</p> <p>4 surprised in the past. The CEO/CHRO did have at least</p> <p>5 one other internal candidate assessed."</p> <p>6 Do you see that?</p> <p>7 A. I do.</p> <p>8 Q. Does that refresh your recollection as to</p> <p>9 how the decision was made to only have Tim Spence</p> <p>10 assessed?</p> <p>11 A. I wasn't part of this email or part of that</p> <p>12 discussion.</p> <p>13 Q. Was it your understanding as of June 8, 2020,</p> <p>14 that Tim Spence was the successor?</p> <p>15 A. I don't recall the exact date -- the exact</p> <p>16 dates, but it was clear in my mind that Tim was head and</p> <p>17 shoulders above any other candidate.</p> <p>18 Q. Do you recall the question of whether or not</p> <p>19 Tayfun and/or Phil McHugh should be assessed by RHR as</p> <p>20 well?</p> <p>21 A. I don't recall that.</p> <p>22 Q. Did anyone ever come and ask you if more than</p> <p>23 one internal candidate should be assessed by RHR to</p> <p>24 succeed Greg Carmichael as president and/or CEO?</p> <p>25 A. Not that I recall.</p>
	<p>Page 138</p>

<p>1 (Plaintiff's Exhibit 25 is marked for 2 identification.) 3 BY MR. SABA: 4 Q. Mr. Heminger, I've just handed you Exhibit 5 Number 25, and let me represent to you this is a 6 remarking of the CEO profile that is previously marked 7 as part of Exhibit 21. It again just contains Bates 8 stamped numbers 001074 through 001079; is that correct? 9 A. Correct. 10 Q. With respect to the Essential Leadership 11 Behaviors, and under Business Management, do you have 12 any objective information or data indicating that as of 13 September 22nd, 2020, Tim Spence was superior to or 14 better than Phil McHugh with respect to driving 15 "innovative thinking on the strategic side while 16 simultaneously maintaining a close eye on rigorous 17 execution"? 18 MR. CIOFFI: Objection to the form of the 19 question. You mean other than what he experienced? 20 MR. SABA: I'm asking does he have any 21 objective information or data. 22 BY MR. SABA: 23 Q. Do you understand the question? 24 A. Uh-huh. 25 Q. And what's your answer?</p>	<p>Page 140</p>	<p>1 strategic direction? 2 MR. CIOFFI: Objection to the form of the 3 question. Are you, in his personal opinion, are 4 you including his business judgment or are you 5 excluding his business judgment? 6 MR. SABA: I'm asking for any objective 7 information or data. 8 MR. CIOFFI: Well, you said other than his 9 personal opinion. I'm just asking what's included 10 in his personal opinion? Is it his business 11 judgment or not his business judgment? 12 MR. SABA: I'm asking for objective 13 information or data. 14 THE WITNESS: My objective information is my 15 business acumen, and that's what I rely on. 16 BY MR. SABA: 17 Q. That's your own personal business judgment, 18 correct? 19 A. Yes. 20 Q. I'm asking for any objective data -- objective 21 information or data. 22 MR. CIOFFI: Objection. 23 MR. SABA: Other than just -- let me finish my 24 question. 25 MR. CIOFFI: You're arguing with him. You're</p>	<p>Page 142</p>
<p>1 A. My objective information would come from 2 observations of presentations by the various parties. 3 And, yes, I believe that Tim Spence provided superior 4 qualities in being able to present detailed technology, 5 detailed digital platforms that were exemplary. 6 Q. Other than your opinion of their presentations 7 or Mr. Spence's presentation, do you have any objective 8 information or data indicating that as of September 9 22nd, 2020, Tim Spence was superior to or better than 10 Phil McHugh with respect to driving innovative thinking 11 on the strategic side while simultaneously maintaining a 12 close eye on rigorous execution? 13 MR. CIOFFI: Objection to the form of the 14 question. 15 THE WITNESS: I believe I answered the 16 question to the best of my ability. 17 BY MR. SABA: 18 Q. Do you have anything beyond just your personal 19 judgment based on their presentations, any data, any 20 objective evidence? 21 A. I don't have any, no. 22 Q. Do you have any objective information or data, 23 other than just your personal opinion, indicating that 24 as of September 22nd, 2020, Tim Spence was superior to 25 or better than Phil McHugh with respect to establishing</p>	<p>Page 141</p>	<p>1 not asking a question. 2 MR. SABA: I'm clarifying my question for him. 3 I'm not asking for his opinion or his business 4 judgment. I'm asking, does he have any objective 5 information or data that would indicate that Tim 6 Spence is superior to or better than Phil McHugh 7 with respect to establishing strategic direction as 8 of September 22nd, 2020. 9 MR. CIOFFI: Objection. Redundant. 10 Argumentative. 11 MR. SABA: Go ahead. 12 THE WITNESS: There were many presentations 13 made throughout the last few years in the board 14 meeting that were objective. I can't recall the 15 exact presentations, but he was far superior in 16 making strategic and technical presentations. 17 BY MR. SABA: 18 Q. That's your opinion of the presentation, 19 correct? 20 MR. CIOFFI: Objection. You're 21 mischaracterizing his testimony. He's saying that 22 was his business judgment. 23 MR. SABA: Fine. That's your -- 24 BY MR. SABA: 25 Q. Other than your business judgment, other than</p>	<p>Page 143</p>

<p>1 your judgment call, what data do you have? What 2 objective evidence do you have that Tim Spence was 3 superior to or better than Phil McHugh with respect to 4 establishing strategic direction? 5 MR. CIOFFI: Objection. He answered that 6 question. What he based his business judgment on. 7 THE WITNESS: The presentations that were made 8 were not objective. They were actual presentations 9 made. And from those presentations, it's my 10 business judgment that they were far superior. 11 BY MR. SABA: 12 Q. Other than your business judgment, do you have 13 anything else to indicate that Mr. Spence was superior 14 to Phil McHugh with respect to establishing strategic 15 direction? 16 MR. CIOFFI: Objection. Asked and answered. 17 THE WITNESS: I can't answer it any better 18 than what I've done. 19 BY MR. SABA: 20 Q. I'm asking if you have any other data, any -- 21 purely data, do you have any data to support that? 22 MR. CIOFFI: Objection. He described it. 23 THE WITNESS: No. 24 BY MR. SABA: 25 Q. Do you have any objective information or data</p>	<p>Page 144</p> <p>1 better than Phil McHugh with respect to possessing the 2 vision to outline a balanced organic growth, 3 acquisitions, and optimization, rooted in deep knowledge 4 of the banking industry? 5 A. Presentation skills and the depth and breadth 6 of those presentation skills, in my opinion, are 7 objective, and they were clearly -- 8 Q. I didn't ask that question. I said other than 9 the presentation -- 10 MR. CIOFFI: Objection, Counsel. You're being 11 argumentative. Allow him to finish. 12 THE WITNESS: I've answered the question to 13 the best of my ability. 14 MR. CIOFFI: Allow him to finish answering. 15 Finish your answer. Go ahead. 16 BY MR. SABA: 17 Q. Do you understand my question, because you're 18 not answering? 19 MR. CIOFFI: Counsel, let him answer his 20 question. 21 THE WITNESS: I understand your question and 22 I'm giving you my business judgment on watching the 23 objective presentations made by not those two, 24 other executives as well, and intellectually it was 25 quite obvious and clear from the data that was</p> <p>Page 146</p>
<p>1 indicating that as of September 22nd, 2020, Tim Spence 2 was superior to or better than Phil McHugh with respect 3 to possessing the vision to outline a balanced, "organic 4 growth, acquisitions, and optimization, rooted in deep 5 knowledge of the banking industry"? 6 A. Again, from all the presentations that were 7 made, it was quite obvious and clear that he had a much 8 deeper understanding, depth and breadth of the future of 9 banking. So that's my assessment of the presentations 10 that were made. 11 Q. Other than your assessment of the 12 presentations that were made, do you have any data or 13 objective evidence that would indicate that Mr. Spence 14 is superior to or better than Phil McHugh with respect 15 to "possessing the vision to outline a balanced organic 16 growth, acquisitions, and optimization, rooted in a deep 17 knowledge of the banking industry"? 18 MR. CIOFFI: Objection. Asked and answered. 19 Argumentative. 20 THE WITNESS: I've answered the question. 21 BY MR. SABA: 22 Q. No, you didn't. I asked other than the 23 presentations and your opinion of them, do you have any 24 objective information or data indicating that as of 25 September 22nd, 2020, Tim Spence was superior to or</p> <p>Page 145</p>	<p>1 presented that Tim Spence had a much better grasp. 2 BY MR. SABA: 3 Q. Other than the presentations, do you 4 understand that clause? 5 A. I do. 6 Q. So other than the presentations, do you have 7 any objective information or data indicating that as of 8 September 22nd, 2020, Tim Spence was superior to or 9 better than Phil McHugh with respect to possessing the 10 vision to outline a balanced organic growth, 11 acquisitions, and optimization, rooted in deep knowledge 12 of the banking industry? 13 MR. CIOFFI: Objection. Redundant. 14 Argumentative. He answered. 15 MR. SABA: He didn't answer. Go ahead. 16 MR. CIOFFI: He did answer. He answered based 17 on the data in the presentations and his 18 assessment -- 19 MR. SABA: I said other than the 20 presentations. He said -- answer the question. 21 THE WITNESS: I don't know what "other" would 22 be. 23 BY MR. SABA: 24 Q. Do you have anything, other than the 25 presentations, that's data or objective evidence that</p> <p>Page 147</p>

<p>1 would support that?</p> <p>2 A. The presentations would be data.</p> <p>3 Q. I didn't have -- did you hear my question?</p> <p>4 MR. CIOFFI: Counsel, you keep cutting him</p> <p>5 off. Let him finish his answer. Finish your</p> <p>6 answer, please.</p> <p>7 THE WITNESS: The presentations would include</p> <p>8 data and objective presentation materials that I</p> <p>9 based my judgment on.</p> <p>10 BY MR. SABA:</p> <p>11 Q. What data and presentation materials were ever</p> <p>12 presented in a presentation that would indicate that Tim</p> <p>13 Spence possessed the vision to outline a balanced</p> <p>14 organic growth, acquisitions, and optimization, rooted</p> <p>15 in a deep knowledge of the banking industry? What</p> <p>16 specific data can you point to?</p> <p>17 A. I don't know.</p> <p>18 Q. Do you have any objective information or data,</p> <p>19 specific data, indicating that as of September 22nd,</p> <p>20 2020, Tim Spence was superior to or better than Phil</p> <p>21 McHugh with respect to driving execution?</p> <p>22 A. Again, based on all the presentations in the</p> <p>23 board meetings, my answer is yes, I feel that he drove</p> <p>24 the performance of the bank much better.</p> <p>25 Q. Outside your observation of the presentations,</p>	<p>Page 148</p> <p>1 BY MR. SABA:</p> <p>2 Q. Do you have any objective information or data</p> <p>3 indicating that as of September 22nd, 2020, Tim Spence</p> <p>4 was superior to Phil McHugh with respect to "maintaining</p> <p>5 FTB's standing with the regulators and managing the</p> <p>6 implications of the rise of ESG issues in 2020 and</p> <p>7 beyond"?</p> <p>8 A. From all the presentations that were made,</p> <p>9 again, at the board meetings with regulators present,</p> <p>10 Tim was far superior than any other executive we've ever</p> <p>11 had in being able to articulate the design, articulate</p> <p>12 the balance, and articulate the new controls put in</p> <p>13 place to be able to meet or exceed the compliance</p> <p>14 reporting requirements.</p> <p>15 Q. Outside your opinions regarding Tim Spence's</p> <p>16 presentations, do you have any objective information or</p> <p>17 actual data indicating that as of September 22nd, 2020,</p> <p>18 Tim Spence was superior to Phil McHugh with respect to</p> <p>19 "maintaining FTB's standing with the regulators and</p> <p>20 managing the implications of the rise of ESG issues in</p> <p>21 2020 and beyond"?</p> <p>22 MR. CIOFFI: Objection. You just asked that</p> <p>23 question.</p> <p>24 MR. SABA: No, I didn't.</p> <p>25 MR. CIOFFI: Yeah, you did.</p>
<p>Page 149</p> <p>1 do you have any data?</p> <p>2 A. No.</p> <p>3 Q. Do you have any objective information?</p> <p>4 A. No.</p> <p>5 MR. CIOFFI: Objection. Asked and answered.</p> <p>6 BY MR. SABA:</p> <p>7 Q. Do you have any objective information or data</p> <p>8 indicating that as of September 22, 2020, Tim Spence was</p> <p>9 superior to Phil McHugh with respect to effectively</p> <p>10 managing the strength of the existing team while</p> <p>11 continuing to attract a more diverse group of</p> <p>12 executives?</p> <p>13 A. Again, from the presentations made in all the</p> <p>14 various -- and recall, I would have sat through dozens</p> <p>15 and dozens of meetings, watching both present and,</p> <p>16 again, it's my clear view that Tim was far superior in</p> <p>17 all of those attributes.</p> <p>18 Q. Do you have any objective data or information</p> <p>19 outside those presentations indicating that Tim Spence</p> <p>20 was superior to Phil McHugh with respect to "effectively</p> <p>21 managing the strength of the existing team while</p> <p>22 continuing to attract a more diversive group of</p> <p>23 executives"?</p> <p>24 A. No.</p> <p>25 MR. CIOFFI: Objection. Asked and answered.</p>	<p>Page 151</p> <p>1 MR. SABA: No, I didn't. Go ahead.</p> <p>2 THE WITNESS: No.</p> <p>3 BY MR. SABA:</p> <p>4 Q. Do you have any objective information or data</p> <p>5 indicating that as of September 22nd, 2020, Tim Spence</p> <p>6 was superior to Phil McHugh with respect to the "ability</p> <p>7 to navigate complexity and demonstrate resilience in a</p> <p>8 challenging world"?</p> <p>9 A. Again, all of the presentations, the dozens of</p> <p>10 presentations that I've sat through during my years on</p> <p>11 the board, again, it is my business judgment in watching</p> <p>12 all those presentations that he did possess a far</p> <p>13 superior quality.</p> <p>14 Q. Other than the presentations you observed, do</p> <p>15 you have any objective information or actual data</p> <p>16 indicating that as of September 22nd, 2020, Tim Spence</p> <p>17 was superior to Phil McHugh with respect to the ability</p> <p>18 to navigate complexity and demonstrate resilience in a</p> <p>19 challenging world?</p> <p>20 MR. CIOFFI: Objection. Redundant.</p> <p>21 Argumentative. Asked and answered.</p> <p>22 THE WITNESS: No.</p> <p>23 BY MR. SABA:</p> <p>24 Q. Referring you to Exhibit 22 again. And I'm</p> <p>25 going to refer you to the page Fifth Third McHugh</p>

<p>Page 152</p> <p>1 001036. And do you see where Mr. Spence received a 2 benchmark rating of 4 out of 5 from RHR International's 3 assessment; is that correct? 4 A. Correct. 5 Q. Do you have any objective information or data 6 indicating that as of September 22nd, 2020, that Phil 7 McHugh would have not received a 4 or better in an 8 assessment by RHR? 9 MR. CIOFFI: Objection. Form of the question. 10 Asking a hypothetical. 11 MR. SABA: You can answer. 12 MR. CIOFFI: If you have an answer. 13 THE WITNESS: No. 14 BY MR. SABA: 15 Q. You don't? 16 A. I don't have any information, no. 17 Q. What is your understanding of why Mr. McHugh's 18 employment with Fifth Third Bank was terminated? 19 MR. CIOFFI: Objection. Form of the question. 20 Assumes facts not in evidence. It's argumentative. 21 He wasn't terminated. He quit. You may answer. 22 THE WITNESS: It's my understanding and my 23 opinion that Mr. McHugh was not terminated. In 24 fact, he quit, which was a very substantial, very 25 important position.</p>	<p>Page 154</p> <p>1 Q. What is your understanding of why he was 2 disappointed? 3 MR. CIOFFI: Objection to the form of the 4 question. Lacks a foundation. If you know. If 5 you know what he was thinking. 6 THE WITNESS: I just stated he was 7 disappointed that he did not -- he was not offered 8 the top CEO job. 9 BY MR. SABA: 10 Q. And what is your understanding of his basis 11 for being disappointed that he was not given the top CEO 12 or president job? 13 A. What I just said. He didn't get the top job. 14 Q. Did you have an understanding that Mr. McHugh 15 was under the impression that he would be receiving the 16 top job of president or CEO? 17 A. Absolutely -- 18 MR. CIOFFI: Objection to the form of the 19 question as to what impression Mr. McHugh was 20 under, but you may answer. Go ahead. 21 THE WITNESS: Absolutely not. It was never 22 discussed. He was never discussed as a top 23 candidate within the boardroom. 24 BY MR. SABA: 25 Q. Did you ever discuss the termination or end of</p>
<p>Page 153</p> <p>1 BY MR. SABA: 2 Q. What specifically is your understanding of the 3 facts, other than Mr. Cioffi's prompting, what 4 specifically is your understanding of the facts that led 5 to Mr. Spence's -- excuse me, led to the termination of 6 Mr. McHugh's employment? 7 MR. CIOFFI: Objection. Assumes facts not in 8 evidence. Is argumentative. He wasn't terminated. 9 MR. SABA: That's not what the question said. 10 MR. CIOFFI: Yes, it did. Read the question 11 back, please. 12 MR. SABA: His employment terminated, his 13 employment ended, that's what it means. It doesn't 14 mean to anything else other than it ended. 15 BY MR. SABA: 16 Q. Is it your understanding that Mr. McHugh's 17 employment terminated, it ended, correct? 18 A. He was not terminated. 19 Q. That's not what my question said? 20 A. That's my definition of terminated. 21 Q. What is your understanding of what led to the 22 end of Mr. McHugh's employment with Fifth Third Bank? 23 A. My understanding is he was disappointed that 24 he was not selected to become the future CEO of the 25 company and, therefore, he decided to leave.</p>	<p>Page 155</p> <p>1 Mr. McHugh's employment with Fifth Third Bank with 2 anybody inside Fifth Third Bank? 3 MR. CIOFFI: Objection to the form of the 4 question. Are you saying outside of the board 5 meetings or -- 6 MR. SABA: No. At any time. 7 THE WITNESS: Would you restate that for me? 8 MR. CIOFFI: Read it back, please. 9 BY MR. SABA: 10 Q. Have you had any discussions with any 11 person at Fifth Third Bank regarding Mr. McHugh's 12 termination or end of his employment with Fifth Third 13 Bank? 14 A. Yes. All the board, we were informed of 15 Mr. McHugh's decision to leave the bank. I don't know 16 the exact date, but, yes, we were informed. We had a 17 discussion pertaining to that information. 18 Q. Who informed the board of that? 19 A. I believe it was the CEO, Greg Carmichael. 20 Q. And when was the board informed of that? 21 A. I don't know the exact date. 22 Q. Outside the board venue, did you have any 23 discussions with any other employees of Fifth Third Bank 24 regarding Mr. McHugh's departure or termination of 25 employment from Fifth Third Bank?</p>

<p>Page 156</p> <p>1 A. Not that I recall.</p> <p>2 Q. Was there any decision made regarding</p> <p>3 Mr. Spence becoming president of Fifth Third Bank during</p> <p>4 the September 21st, 2020 meeting of the board?</p> <p>5 A. I don't recall the exact dates.</p> <p>6 (Plaintiff's Exhibit 26 is marked for</p> <p>7 identification.)</p> <p>8 BY MR. SABA:</p> <p>9 Q. Mr. Heminger, I've handed you what is marked</p> <p>10 as Exhibit 26. Can you identify that for me?</p> <p>11 A. Yes. Fifth Third Bank, National Association</p> <p>12 Minutes of Joint Meeting of the Board of Directors,</p> <p>13 September 22, 2020.</p> <p>14 Q. And Exhibit Number 26 is Bates stamped Fifth</p> <p>15 Third McHugh 212566 through Fifth Third McHugh 212569;</p> <p>16 is that correct?</p> <p>17 A. Correct.</p> <p>18 Q. And you attended that meeting in person; is</p> <p>19 that correct?</p> <p>20 A. Yes.</p> <p>21 Q. And that meeting was presided over by</p> <p>22 Mr. Carmichael; is that correct?</p> <p>23 A. That's correct.</p> <p>24 Q. Based upon Exhibit Number 26, are you able to</p> <p>25 determine whether or not there was any decision made</p>	<p>Page 158</p> <p>1 Fifth Third Bancorp?</p> <p>2 A. It wasn't a determination until this</p> <p>3 final document was signed, but there were</p> <p>4 presentations in effect that Tim was being developed</p> <p>5 and being recommended to be the next president of</p> <p>6 the bank.</p> <p>7 Q. Was there a meeting held in conjunction with</p> <p>8 the signing of this unanimous written consent identified</p> <p>9 as Exhibit Number 27?</p> <p>10 A. I don't recall if there was a separate</p> <p>11 meeting.</p> <p>12 Q. Just to clarify, Exhibit Number 27 is Bates</p> <p>13 stamped Fifth Third McHugh 212871 through 212872; is</p> <p>14 that correct?</p> <p>15 A. Yes.</p> <p>16 Q. Do you know why -- strike that.</p> <p>17 Do you know if there's a particular reason why</p> <p>18 the appointment of Mr. Spence as president was done as</p> <p>19 unanimous written consent instead of being done as a</p> <p>20 vote at a board meeting?</p> <p>21 MR. CIOFFI: Objection to the form of the</p> <p>22 question. Because it was unanimous written</p> <p>23 consent. I mean, the document speaks for itself,</p> <p>24 Counsel.</p> <p>25 MR. SABA: That's not my question.</p>
<p>Page 157</p> <p>1 regarding Mr. Spence becoming president of Fifth Third</p> <p>2 Bank during that board meeting?</p> <p>3 A. I do not see any.</p> <p>4 Q. Based upon Exhibit Number 26, are you able to</p> <p>5 determine whether or not there was any discussion</p> <p>6 regarding CEO or president succession planning or</p> <p>7 candidates during the September 22nd, 2020 joint board</p> <p>8 meeting of the board of directors?</p> <p>9 A. I do not.</p> <p>10 (Plaintiff's Exhibit 27 is marked for</p> <p>11 identification.)</p> <p>12 BY MR. SABA:</p> <p>13 Q. Mr. Heminger, I've handed you what's been</p> <p>14 marked as Exhibit Number 27. Can you identify that for</p> <p>15 me, please?</p> <p>16 A. Yes. Fifth Third Bancorp Unanimous Written</p> <p>17 Consent of the Board of Directors Appointing President,</p> <p>18 October 26, 2020.</p> <p>19 Q. And do you know what the purpose of this</p> <p>20 unanimous written consent was?</p> <p>21 A. It was to appoint Tim Spence as the president</p> <p>22 of Fifth Third Bancorp.</p> <p>23 Q. Prior to this unanimous consent being</p> <p>24 circulated for signature, had there already been a</p> <p>25 determination that Mr. Spence would become president of</p>	<p>Page 159</p> <p>1 BY MR. SABA:</p> <p>2 Q. Do you know why it was done in this fashion,</p> <p>3 as a unanimous written consent, as opposed to being done</p> <p>4 as a vote at a board meeting?</p> <p>5 A. I don't recall.</p> <p>6 (Plaintiff's Exhibit 28 is marked for</p> <p>7 identification.)</p> <p>8 BY MR. SABA:</p> <p>9 Q. Mr. Heminger, I've handed you what's been</p> <p>10 marked as Exhibit Number 28. Can you identify that for</p> <p>11 me, please?</p> <p>12 A. Yes.</p> <p>13 Q. What is Exhibit Number 28?</p> <p>14 A. An organizational announcement representing</p> <p>15 that Tim Spence will become the president of Fifth Third</p> <p>16 Bancorp.</p> <p>17 Q. Have you seen this announcement before?</p> <p>18 A. I don't recall that I have exactly seen this</p> <p>19 announcement.</p> <p>20 Q. Do you know when this announcement was issued</p> <p>21 that's marked as Exhibit Number 28?</p> <p>22 A. No. I don't see a date on it.</p> <p>23 Q. Do you know who prepared the announcement</p> <p>24 that's marked as Exhibit Number 28?</p> <p>25 A. It would have been prepared under Greg</p>

<p style="text-align: right;">Page 160</p> <p>1 Carmichael's direction, but I don't know who prepared 2 it.</p> <p>3 MR. SABA: We can go off the record. 4 THE VIDEOGRAPHER: The time is 3:38 p.m. 5 We're going off the record. 6 (A recess was taken from 3:38 p.m. to 7 3:48 p.m.) 8 THE VIDEOGRAPHER: The time is 3:48 p.m. 9 We're back on the record. 10 MR. SABA: At this point in time, that is all 11 the questions I have. We are going to keep the 12 deposition continued in progress pending resolution 13 of the various discovery disputes and documents 14 that we have been given, so we keep it open for the 15 purpose of asking Mr. Heminger about those 16 additional documents as soon as they are produced. 17 MR. CIOFFI: While I recognize that you are 18 attempting to keep the deposition open without 19 agreeing that you have the right to keep it open, 20 but I understand your position. So we will take a 21 break and decide. 22 THE VIDEOGRAPHER: The time is 3:49 p.m. 23 We're going off the record. 24 (A recess was taken from 3:49 p.m. to 25 4:02 p.m.)</p>	<p style="text-align: right;">Page 162</p> <p>1 you questioned. And it's not just one person, the whole 2 board questions. And I will say that this board is not 3 bashful and really questioning and requiring very strong 4 answers on why one person is assessed one way or 5 another.</p> <p>6 Q. Did this iterative process in the evaluation 7 of members of the enterprise team take place over one or 8 two meetings in presentations by them or over many? 9 MR. SABA: Objection as to form. Go ahead. 10 You can answer. 11 BY MR. CIOFFI: 12 Q. You may answer. 13 THE WITNESS: And I'm sorry, I couldn't hear 14 you. 15 MR. SABA: I just said objection as to form. 16 Go ahead, you can answer. 17 THE WITNESS: No, it takes, you know, I've sat 18 through dozens and dozens of meetings. So -- but 19 we formally -- once, sometimes twice a year, we 20 formally sit down and kind of update the files on 21 how we're seeing the performance and development of 22 an executive, but it's a very iterative process 23 over many different meetings, and you're always 24 assessing. As I said early this morning, every day 25 that you're in a board meeting, you're assessing</p>
<p style="text-align: right;">Page 161</p> <p>1 THE VIDEOGRAPHER: The time is 4:02 p.m. We 2 are back on the record. 3 EXAMINATION 4 BY MR. CIOFFI: 5 Q. Mr. Heminger, earlier today you testified that 6 succession planning by a board is an iterative process; 7 do you remember that testimony? 8 A. Yes, sir. 9 Q. Is that true of all boards you're familiar 10 with? 11 A. It is. 12 Q. Okay. 13 A. In fact, it's the number one responsibility of 14 the board. 15 Q. Would you describe what that process is like 16 generally for boards and then specifically how it took 17 place at Fifth Third with respect to the succession 18 planning for Greg Carmichael's successor? 19 A. You're continually assessing the executive 20 management of the company, and you, in this assessment, 21 usually you review a couple times a year formally and 22 then -- but you're making observations at every meeting. 23 And during executive sessions you will have discussions 24 on how a person performed in their presentation, how 25 their business is performing or not performing, and then</p>	<p style="text-align: right;">Page 163</p> <p>1 all the management that's there. 2 BY MR. CIOFFI: 3 Q. In the succession planning with respect to 4 Mr. Carmichael's successor, you testified that part of 5 the business judgment that you made and the board made 6 was based on presentations from various enterprise team 7 members; is that correct? 8 A. That's correct. 9 Q. Were these -- approximately how many 10 presentations by Mr. Spence? 11 MR. SABA: Objection. Go ahead, you can 12 answer. 13 THE WITNESS: I'm assuming we've had -- we 14 will average approximately six meetings per year 15 and sometimes a couple of telephonic calls, and Tim 16 would make at times multiple presentations 17 throughout the day and a half, two-day board 18 meetings. So, you know, probably at least a dozen 19 per year presentations, at least. 20 BY MR. CIOFFI: 21 Q. And this iterative process, with respect to 22 Mr. Carmichael's successor, continued over what period 23 of time? 24 A. Well, we would have assessed -- I believe Tim 25 came to the bank in approximately 2015, and when you're</p>

<p>Page 164</p> <p>1 bringing someone in at a very high level, executive</p> <p>2 level that we did, trust me, the board is assessing them</p> <p>3 every meeting.</p> <p>4 Q. Are you familiar with the hiring of Tim</p> <p>5 Spence?</p> <p>6 A. I am.</p> <p>7 Q. Would you describe that?</p> <p>8 A. Well, we were -- in fact, I, for one, was</p> <p>9 always very impressed when Tim was -- we had hired Tim</p> <p>10 to do some work when he was with the consultancy firm</p> <p>11 called Oliver Wyman, and he made various presentations</p> <p>12 on the banking industry specifically in and around the</p> <p>13 digital platforms, but other, as I said earlier, venture</p> <p>14 capital-type competitive threats that were coming in,</p> <p>15 and I was always, you know, very, very impressed with</p> <p>16 his knowledge, not only of the banking industry but his</p> <p>17 intimate knowledge of Fifth Third. And I spoke to Greg</p> <p>18 at one time, Greg Carmichael, that is, and said if you</p> <p>19 ever have a chance, you ought to take a look and see if</p> <p>20 there's any way that you could steal him away from</p> <p>21 Oliver Wyman.</p> <p>22 Q. And did, in fact, that happen?</p> <p>23 A. It did.</p> <p>24 Q. You mentioned that Tim Spence came into the</p> <p>25 bank at a very high level; is that correct?</p>	<p>Page 166</p> <p>1 executive stacks up or compares to other executives</p> <p>2 within our industry.</p> <p>3 BY MR. CIOFFI:</p> <p>4 Q. At any time from -- at any time during your</p> <p>5 tenure on the board, was Phil McHugh a named executive?</p> <p>6 A. I don't recall whether in the last proxy he</p> <p>7 was a named executive or not. He had been very close,</p> <p>8 but I don't recall whether he was or not.</p> <p>9 Q. But Tim Spence was for certain; is that</p> <p>10 correct?</p> <p>11 A. To my knowledge, yes.</p> <p>12 Q. You talked about the board forming its</p> <p>13 business judgment based on presentations from members of</p> <p>14 the executive team, the enterprise team, and you talked</p> <p>15 about Mr. Spence making dozens of presentations; is that</p> <p>16 correct?</p> <p>17 A. Yes, sir.</p> <p>18 Q. How many presentations approximately did</p> <p>19 Mr. McHugh make to the board?</p> <p>20 A. Oh, he would have made presentations.</p> <p>21 Generally, the members of the enterprise team will make</p> <p>22 a presentation either in one of the committees, such as</p> <p>23 the risk committee, the audit committee, the technology</p> <p>24 committee, or -- generally not human capital because for</p> <p>25 that we're just reviewing the management team -- but</p>
<p>Page 165</p> <p>1 A. That's correct.</p> <p>2 Q. And, in fact, from the beginning of his</p> <p>3 employment, he was one of the named executives in the</p> <p>4 proxy statement; is that correct?</p> <p>5 A. I believe so.</p> <p>6 Q. What does that mean, a "named executive" in</p> <p>7 the proxy statement?</p> <p>8 A. A named executive in the proxy, it depends on</p> <p>9 kind of an outgoing or incoming a person, but generally</p> <p>10 it's the top five compensated officers in the company.</p> <p>11 Sometimes it might go to six if you straddle a -- I</p> <p>12 think it's a CEO or a chairman or CFO, if one of those</p> <p>13 straddle a time period, you'll have an extra in the</p> <p>14 proxy, but usually it's five or six people.</p> <p>15 Q. Does the board make that determination as to</p> <p>16 the compensation of those executives?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Is -- does the compensation reflect the</p> <p>19 judgment, the business judgment of the board as to the</p> <p>20 value of those employees?</p> <p>21 MR. SABA: Objection as to form. Go ahead,</p> <p>22 you can answer.</p> <p>23 MR. CIOFFI: You may answer.</p> <p>24 THE WITNESS: The board makes an assessment</p> <p>25 not only of the value and judgment, but how that</p>	<p>Page 167</p> <p>1 they'll make presentations possibly inside of those</p> <p>2 committees, but then at the full board meeting, most</p> <p>3 generally the enterprise leaders will review their</p> <p>4 organization. So most generally every meeting they'll</p> <p>5 have at least one presentation.</p> <p>6 Q. Is it accurate to say that Mr. McHugh would</p> <p>7 have made dozens of presentations to the board?</p> <p>8 MR. SABA: Objection as to form. Go ahead,</p> <p>9 you can answer.</p> <p>10 MR. CIOFFI: You may answer.</p> <p>11 THE WITNESS: I'm sorry. I couldn't hear you.</p> <p>12 MR. SABA: I just said objection as to form.</p> <p>13 Go ahead, you can answer.</p> <p>14 THE WITNESS: Okay. Okay. Yes. Over my</p> <p>15 tenure, I would have seen dozens of presentations</p> <p>16 by Mr. McHugh.</p> <p>17 BY MR. CIOFFI:</p> <p>18 Q. Is the same thing true of other members of the</p> <p>19 enterprise team, dozens of presentations?</p> <p>20 A. Yes, sir.</p> <p>21 Q. I'm going to direct your attention to Exhibit</p> <p>22 Number 10 that was marked by counsel for the plaintiff.</p> <p>23 Would you look at that, please?</p> <p>24 A. Okay.</p> <p>25 Q. You see that document? What is that document?</p>

<p>Page 168</p> <p>1 A. It's the document of Minutes of the Joint</p> <p>2 Meeting of the Board of Directors on December 17, 2019.</p> <p>3 Q. I want to direct your attention to page 2 of</p> <p>4 that document which has the Bates stamp 010 -- 7109; do</p> <p>5 you see that at the bottom?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Would you read into the record at the bottom</p> <p>8 of the page, beginning with "following this approval."</p> <p>9 A. Under Market Context?</p> <p>10 Q. Yes, under Market Context.</p> <p>11 A. "Following this approval, Mr. Spence provided</p> <p>12 an overview of the strategy plan review as included in</p> <p>13 the materials for the meeting. He began with a</p> <p>14 discussion of the market context, including a discussion</p> <p>15 of political, economic, social, technological, and</p> <p>16 competitive factors. He described the expected</p> <p>17 population trends in Fifth Third's footprint, noting</p> <p>18 that larger regional cities were generally increasing</p> <p>19 modestly, whereas population growth in smaller cities</p> <p>20 and the largest U.S. markets have leveled off. In</p> <p>21 response to" --</p> <p>22 Q. Let me stop you there. So based on this</p> <p>23 aspect of Mr. Spence's presentation, did you have an</p> <p>24 opportunity to observe objective data about these</p> <p>25 particular subjects?</p>	<p>Page 170</p> <p>1 watched them develop into becoming a CEO.</p> <p>2 BY MR. CIOFFI:</p> <p>3 Q. Were you able to form an independent business</p> <p>4 judgment with respect to Mr. Spence's knowledge about</p> <p>5 competitive factors affecting the bank in the industry?</p> <p>6 A. I was.</p> <p>7 MR. SABA: Objection as to form.</p> <p>8 THE WITNESS: I was.</p> <p>9 BY MR. CIOFFI:</p> <p>10 Q. Were you able to form an independent business</p> <p>11 judgment with respect to his breadth and depth of</p> <p>12 knowledge concerning population trends in the Fifth</p> <p>13 Third footprint?</p> <p>14 A. Yes.</p> <p>15 Q. Were you able to compare Mr. Spence's</p> <p>16 knowledge and depth of analysis in those areas to</p> <p>17 Mr. McHugh?</p> <p>18 MR. SABA: Objection. Lack of foundation.</p> <p>19 Form of the question. Go ahead, you can answer.</p> <p>20 MR. CIOFFI: He's being disruptive, you can</p> <p>21 answer.</p> <p>22 THE WITNESS: Yeah, you know --</p> <p>23 MR. SABA: He's even correcting my objections.</p> <p>24 THE WITNESS: They would -- both Mr. Spence</p> <p>25 and Mr. McHugh would make presentations, but they</p>
<p>Page 169</p> <p>1 MR. SABA: Objection as to form. Go ahead,</p> <p>2 you can answer.</p> <p>3 THE WITNESS: Mr. Spence would have provided</p> <p>4 generally market data, population data, economic</p> <p>5 data, to support his presentation.</p> <p>6 BY MR. CIOFFI:</p> <p>7 Q. What kind of facility with that data did</p> <p>8 Mr. Spence demonstrate?</p> <p>9 A. The facility used?</p> <p>10 Q. The facility, his ability to comprehend and</p> <p>11 understand that data?</p> <p>12 A. You know, I always compare executives on do</p> <p>13 they read to you or do they really know the subject</p> <p>14 matter by just looking at the data and really draw your</p> <p>15 attention to the important parts, important analytics of</p> <p>16 that data, and Tim was exceptional in doing that.</p> <p>17 Q. Based on that information, were you able to</p> <p>18 form an independent business judgment as to Mr. Spence's</p> <p>19 depth of knowledge about strategy with respect to the</p> <p>20 bank?</p> <p>21 MR. SABA: Objection as to form. Go ahead,</p> <p>22 you can answer.</p> <p>23 THE WITNESS: Yes, I was always very</p> <p>24 impressed. In fact, I believe -- I believe Tim was</p> <p>25 one of the top executives I've ever dealt with and</p>	<p>Page 171</p> <p>1 always weren't making anywhere near the same</p> <p>2 presentation. So in this case, Tim was reviewing a</p> <p>3 broad strategic plan, whereas Phil might be</p> <p>4 reviewing organizational data within his</p> <p>5 organization, which did not pertain to the same</p> <p>6 information that Tim was presenting.</p> <p>7 BY MR. CIOFFI:</p> <p>8 Q. What conclusions, if any, were you able to</p> <p>9 draw based on this presentation by Mr. Spence in</p> <p>10 comparison to the presentation by Mr. McHugh and others?</p> <p>11 MR. SABA: Objection as to form. Go ahead,</p> <p>12 you can answer.</p> <p>13 THE WITNESS: I don't recall the data behind</p> <p>14 the exact presentation that was made in December of</p> <p>15 2019.</p> <p>16 BY MR. CIOFFI:</p> <p>17 Q. But in terms of the depth of knowledge about</p> <p>18 competitive factors and about strategic planning, were</p> <p>19 you able to draw a business judgment as to Mr. Spence's</p> <p>20 qualifications?</p> <p>21 A. Yes.</p> <p>22 MR. SABA: Objection. Go ahead, you can</p> <p>23 answer.</p> <p>24 THE WITNESS: Yes. Over the time of watching,</p> <p>25 as I said earlier, being able to observe the</p>

<p>Page 172</p> <p>1 analytics behind the presentations between Tim and</p> <p>2 Mr. McHugh, I was. I felt that Tim was always,</p> <p>3 just at his fingertips, had all the data and was</p> <p>4 very articulate and succinct in being able to</p> <p>5 present that data to the full board.</p> <p>6 BY MR. CIOFFI:</p> <p>7 Q. You mentioned a little bit earlier one of the</p> <p>8 distinguishing factors you made between enterprise team</p> <p>9 members was that some members, like Mr. Spence, really</p> <p>10 understood the information and the data that was being</p> <p>11 presented, and others were simply reading that</p> <p>12 information.</p> <p>13 A. Correct. That's correct.</p> <p>14 Q. Where would you put Mr. Spence and where would</p> <p>15 you put Mr. McHugh?</p> <p>16 A. And I recognized that back when Tim was with</p> <p>17 Oliver Wyman, why I recommended to Greg that if there's</p> <p>18 ever a chance, you ought to see if you could bring him</p> <p>19 on board; that he just had such a grasp of the intricate</p> <p>20 details of the banking industry at his fingertips. And</p> <p>21 up to the last board meeting, I still recognize that he</p> <p>22 has that intellectual capacity to draw on his knowledge</p> <p>23 and have the facts at his fingertips, and he's quite</p> <p>24 remarkable.</p> <p>25 Q. Did you find Mr. McHugh performing at that</p>	<p>Page 174</p> <p>1 A. At times it would be a comparison, but it was</p> <p>2 quickly observed that Tim was, in my business judgment,</p> <p>3 head and shoulders above anybody else on the enterprise</p> <p>4 team.</p> <p>5 Q. I want to direct your attention to the --</p> <p>6 well, before I ask you that question, did the other</p> <p>7 board members share that business judgment with you?</p> <p>8 MR. SABA: Objection. Go ahead, you can</p> <p>9 answer.</p> <p>10 MR. CIOFFI: You may answer.</p> <p>11 THE WITNESS: Sir, I'm -- when you turn your</p> <p>12 head, I'm sorry, I just can't hear you.</p> <p>13 MR. SABA: No, no, you're fine.</p> <p>14 THE WITNESS: Yes, they did share that with</p> <p>15 me.</p> <p>16 BY MR. CIOFFI:</p> <p>17 Q. When they -- when I say "share," they had the</p> <p>18 same business judgment as you did with respect to</p> <p>19 Mr. Spence; is that your testimony?</p> <p>20 MR. SABA: Objection. Go ahead, you can</p> <p>21 answer.</p> <p>22 MR. CIOFFI: You may answer.</p> <p>23 THE WITNESS: Yes. I mean, it was clearly a</p> <p>24 consensus of the board that as we were watching</p> <p>25 Tim's development, that we believed that he had the</p>
<p>Page 173</p> <p>1 same level in his presentations or did you find that he</p> <p>2 was more or less reading?</p> <p>3 MR. SABA: Objection. Go ahead. You can</p> <p>4 answer.</p> <p>5 MR. CIOFFI: You may answer.</p> <p>6 THE WITNESS: And they're presenting different</p> <p>7 things, but I found Mr. Spence's presentation</p> <p>8 skills superior to Mr. McHugh's.</p> <p>9 BY MR. CIOFFI:</p> <p>10 Q. You mentioned in the iterative process that</p> <p>11 the board members would discuss these presentations; is</p> <p>12 that correct?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Did you have a discussion with the other board</p> <p>15 members about your business judgment as to Mr. Spence's</p> <p>16 skill set that you just described?</p> <p>17 MR. SABA: Objection as to form. Go ahead,</p> <p>18 you can answer.</p> <p>19 THE WITNESS: Yes, we did. Often we would</p> <p>20 have, in the executive sessions, we would have</p> <p>21 discussions about how we saw executives developing.</p> <p>22 So yes.</p> <p>23 BY MR. CIOFFI:</p> <p>24 Q. Did that involve comparing Mr. Spence to other</p> <p>25 members of the enterprise team?</p>	<p>Page 175</p> <p>1 entire package.</p> <p>2 BY MR. CIOFFI:</p> <p>3 Q. Go to the next paragraph of Exhibit Number 10,</p> <p>4 which is 7110. Would you read that first sentence of</p> <p>5 that first full paragraph, which is --</p> <p>6 A. Oh, on 7110.</p> <p>7 Q. Yes, 7110.</p> <p>8 A. "Mr. Spence then discussed the competitive</p> <p>9 dynamics with the US banking industry, including, a</p> <p>10 discussion of non-traditional threats to the regional</p> <p>11 banking industry generally and to Fifth Third</p> <p>12 specifically. He reviewed the threats posed by large</p> <p>13 technology companies, which have significantly larger</p> <p>14 budgets to leverage for digital innovation and to drive</p> <p>15 disintermediation of traditional banks."</p> <p>16 Q. Let me stop you there and ask you again, based</p> <p>17 on Mr. Spence's presentation, were you able to form a</p> <p>18 business judgment as to the breadth and depth of his</p> <p>19 knowledge with respect to the competitive dynamics for</p> <p>20 the US banking industry?</p> <p>21 A. Absolutely.</p> <p>22 MR. SABA: Objection. Go ahead, you can</p> <p>23 answer.</p> <p>24 THE WITNESS: In fact, upon Mr. Spence coming</p> <p>25 into Fifth Third, we had never received that type</p>

<p>Page 176</p> <p>1 of detail and depth and breadth of the competitive 2 landscape before. Tim really brought that 3 knowledge and that background to -- and I think it 4 comes from his consultancy days where he saw the 5 entire industry, but he saw the threats coming in 6 the industry outside of the traditional banks. 7 BY MR. CIOFFI: 8 Q. In this part of Mr. Spence's presentation on 9 December 17, 2019, did he present to the board objective 10 data and information? 11 A. Yes. 12 MR. SABA: Objection. 13 BY MR. CIOFFI: 14 Q. Was he -- did he analyze that information? 15 A. Within his presentation, there was analysis 16 and, you know, yes, deep thought and recommendations on 17 how Fifth Third can counteract, compete, or maybe not 18 compete in certain operations or in business. 19 Q. How would you assess Mr. Spence's 20 understanding of the competitive dynamics of the banking 21 industry? 22 MR. SABA: Objection. Go ahead, you can 23 answer. 24 THE WITNESS: I would assess it, you know, one 25 of the best visions of the business and a point in</p>	<p>Page 178</p> <p>1 Q. Go ahead and move to the next paragraph if you 2 would, the Bank M&A Outlook, would you look at that 3 section? 4 A. Yes. 5 Q. Could you read the first couple of sentences 6 there? 7 A. "Mr. Spence next reviewed the bank mergers and 8 acquisitions (M&A) outlook. He noted that trillionaire 9 banks were unable to execute M&A due to deposit cap 10 legislation and that, based on recent commentary and 11 executive level changes, large regional bank mergers of 12 equals were appearing less probable." 13 Q. Let me stop you there. In this aspect of 14 Mr. Spence's presentation regarding mergers and 15 acquisitions, did he present to the board objective 16 facts, information, and data? 17 A. Yes. 18 MR. SABA: Objection. Go ahead, you can 19 answer. 20 THE WITNESS: Yes, he did. 21 BY MR. CIOFFI: 22 Q. Did he present an analysis of that data 23 that -- those facts and that information? 24 A. Yes, he would have presented several different 25 combinations, several different merger candidates, and</p>
<p>Page 177</p> <p>1 fact, when I first joined the board, banking was 2 all about auto liens and, you know, loaning money 3 for autos. Tim turned us around and said you guys 4 got to figure out how to do something other than 5 just autos. He was very good at bringing a 6 different view into the business. 7 BY MR. CIOFFI: 8 Q. Did you share that business judgment with 9 other members of the board? 10 A. Yes, sir. We talked often about that. 11 Q. Did other members of the board share your 12 assessment of Tim's depth and breadth of knowledge of 13 the competitive dynamics? 14 MR. SABA: Objection. 15 THE WITNESS: Yes, sir. 16 BY MR. CIOFFI: 17 Q. Was that -- was there a consensus developing 18 about Tim at this point in time in terms of being a 19 leading candidate for president and CEO? 20 A. In 2019, we were certainly building the 21 consensus that he was the top candidate, leading 22 candidate, and we wanted to continue to see him develop. 23 Q. Was that view you've just articulated shared 24 unanimously among the board members? 25 A. That's my opinion, yes.</p>	<p>Page 179</p> <p>1 the positives, negatives, looking at balance sheet 2 information, income statement information, allowance for 3 losses, an array of different financial information that 4 the board should take into context if ever making a 5 decision. 6 Q. Based on this aspect of Mr. Spence's 7 presentation on December 17, 2019, were you able to form 8 a business judgment as to Mr. Spence's qualifications to 9 be president? 10 MR. SABA: Objection. Go ahead, you can 11 answer. 12 THE WITNESS: Yes. My business judgment and 13 the judgment of the board was that he was 14 developing rapidly and someone that we thought 15 certainly had the potential. 16 MR. SABA: Objection. Move to strike. 17 BY MR. CIOFFI: 18 Q. Go ahead and move to the next paragraph. 19 Would you look at that, please? 20 A. The Look Back? 21 Q. The Look Back, yeah? 22 A. "Next, Mr. Spence reviewed progress against 23 key Northstar metrics and goals to become a top quartile 24 bank, including progress on return on tangible common 25 equity, (ROTCE), return on assets, (ROA), efficiency</p>

<p>1 ratio, and primary bank consideration since 2016." Page 180</p> <p>2 Q. Keep going.</p> <p>3 A. "He noted that performance against each of</p> <p>4 these metrics had improved significantly in the past</p> <p>5 several years."</p> <p>6 Q. Given the reference to metrics and this part</p> <p>7 of the presentation, did Mr. Spence's presentation on</p> <p>8 these metrics contain objective data, facts, and other</p> <p>9 information?</p> <p>10 MR. SABA: Objection. Go ahead, you can</p> <p>11 answer.</p> <p>12 THE WITNESS: Yes, sir. It would have been a</p> <p>13 comparative, not just of Fifth Third by itself but</p> <p>14 comparing us against all of our peers. And</p> <p>15 generally, the peers that are included in the proxy</p> <p>16 that we compare ourselves to for compensation</p> <p>17 purposes.</p> <p>18 BY MR. CIOFFI:</p> <p>19 Q. How would you describe Mr. Spence's analytical</p> <p>20 abilities with respect to this data and his facility</p> <p>21 with those metrics facts objective data?</p> <p>22 A. His recall on all these objectives and the</p> <p>23 analytics on which he would present -- and he had</p> <p>24 that -- he possesses that ability to take very</p> <p>25 intricate, difficult, complex situations and be able to</p>	<p>1 Q. In this part of the presentation, did Page 182</p> <p>2 Mr. Spence also present objective facts, data, and</p> <p>3 information?</p> <p>4 A. He did.</p> <p>5 MR. SABA: Objection.</p> <p>6 BY MR. CIOFFI:</p> <p>7 Q. Based on his presentation and those objective</p> <p>8 facts, data, and information, were you able to form a</p> <p>9 business judgment as to Mr. Spence's capabilities as a</p> <p>10 strategic planner?</p> <p>11 A. Yes, I was.</p> <p>12 Q. What business judgment did you form?</p> <p>13 A. I felt that he had a tremendous ability to,</p> <p>14 again, articulate a vision to really -- to be passionate</p> <p>15 and drive a culture within the bank and within the</p> <p>16 management team to make us better.</p> <p>17 Q. On this point, go on down to the next</p> <p>18 paragraph, and please read that first sentence -- first</p> <p>19 two sentences, please?</p> <p>20 A. "Thereafter, Mr. Spence proceeded to a</p> <p>21 preliminary discussion of strategic priorities. He</p> <p>22 discussed the focus on relationship banking and</p> <p>23 articulated the vision, sources of differentiation, and</p> <p>24 foundation for achieving the vision around relationship</p> <p>25 banking. He noted that the focus would be on pursuing</p>
<p>1 explain them in a very levelheaded, common sense way to Page 181</p> <p>2 directors who don't work with this data every day. So,</p> <p>3 yes, he was an outstanding presenter and assessed the</p> <p>4 business knowledge to be able to, again, articulate what</p> <p>5 the numbers meant.</p> <p>6 Q. Did you discuss your business judgment with</p> <p>7 respect to his presentation about the metrics with the</p> <p>8 other board members?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Did they share your assessment of Mr. Spence?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Let's go on to the next page, page 4, which is</p> <p>13 7111. Can you see that?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Would you read that first sentence at the top</p> <p>16 of the page?</p> <p>17 A. "Mr. Spence then reviewed the strategic</p> <p>18 planning process against OCC requirements under</p> <p>19 heightened standards, and made note of required</p> <p>20 enhancements."</p> <p>21 Q. What -- were you able to form a business</p> <p>22 judgment about Mr. Spence's strategic planning</p> <p>23 capabilities from this presentation?</p> <p>24 A. This would have been one part of the</p> <p>25 presentation, yes.</p>	<p>1 strategic enablers including leading share and Page 183</p> <p>2 attractive markets, One Bank value and execution,</p> <p>3 differentiated digitally enabled and maintaining an</p> <p>4 ability to engage in selective M&A as opportunities</p> <p>5 arise."</p> <p>6 Q. In this part of his presentation, did</p> <p>7 Mr. Spence present objective facts, data, and</p> <p>8 information to the board?</p> <p>9 A. Yes, sir.</p> <p>10 MR. SABA: Objection.</p> <p>11 BY MR. CIOFFI:</p> <p>12 Q. Did he analyze those facts, that information,</p> <p>13 and that data?</p> <p>14 A. Yes.</p> <p>15 Q. How would you describe his analysis of those</p> <p>16 facts, information, and data?</p> <p>17 A. Again, he had a very keen way of being able to</p> <p>18 present for everybody to understand and I would say one</p> <p>19 of his best attributes was getting people to think a new</p> <p>20 way around banking and not just the old school of</p> <p>21 banking.</p> <p>22 Q. Based on the strategic vision articulated by</p> <p>23 Mr. Spence, were you able to form a business judgment as</p> <p>24 to his qualifications to be president of the bank?</p> <p>25 MR. SABA: Objection. Go ahead, you can</p>

<p>1 answer.</p> <p>2 THE WITNESS: Yes.</p> <p>3 BY MR. CIOFFI:</p> <p>4 Q. And what was that business judgment?</p> <p>5 A. We felt clearly that he was our top candidate</p> <p>6 to become the president and CEO, and we were very</p> <p>7 interested and continued to watch him develop.</p> <p>8 Q. Go ahead and read into the record the next</p> <p>9 couple of sentences at the beginning of the third full</p> <p>10 paragraph.</p> <p>11 A. "Mr. Spence then reviewed the strengths and</p> <p>12 weaknesses of the organization against these strategic</p> <p>13 enablers and foundation elements. With respect to</p> <p>14 leading share, he noted that Fifth Third was first in</p> <p>15 its peer group with respect to deposits in its top three</p> <p>16 share and that early de novo branching results were</p> <p>17 strong."</p> <p>18 Q. Let me stop you there. And, again, this</p> <p>19 analysis of the strengths and weaknesses of the</p> <p>20 organization is referring to the bank; is that right?</p> <p>21 A. Yes, sir.</p> <p>22 Q. And in this analysis of the strengths and</p> <p>23 weaknesses of the bank, did Mr. Spence present to you</p> <p>24 objective data, facts, and information?</p> <p>25 A. Yes.</p>	<p>Page 184</p> <p>1 A. Yes, sir.</p> <p>2 Q. Did the other board members have the same</p> <p>3 opinion as you did with respect to his leadership</p> <p>4 skills?</p> <p>5 MR. SABA: Objection.</p> <p>6 MR. CIOFFI: You may answer.</p> <p>7 THE WITNESS: Yes, sir.</p> <p>8 BY MR. CIOFFI:</p> <p>9 Q. Go ahead and read the next paragraph, please.</p> <p>10 A. Next Mr. Spence, right there?</p> <p>11 Q. Yes.</p> <p>12 A. "Next Mr. Spence identified the four key</p> <p>13 strategic objectives for the near future and reviewed</p> <p>14 key investments and investments relating thereto:</p> <p>15 Leading share and attractive markets, One Bank value</p> <p>16 proposition, digitally enabled experience, strategic</p> <p>17 M&A, and strong foundations. With respect to leading</p> <p>18 share in attractive markets, he reviewed target</p> <p>19 build-outs required to achieve top five market share in</p> <p>20 key geographies primarily in the southeast, and</p> <p>21 discussed necessary investments in relationship in</p> <p>22 relation thereto."</p> <p>23 Q. Let me stop you there. In this part of his</p> <p>24 presentation, did Mr. Spence present additional facts,</p> <p>25 data, and information to the board?</p>
<p>Page 185</p> <p>1 Q. Did he analyze the data, those facts, and that</p> <p>2 information?</p> <p>3 A. He did. And what we were most impressed with,</p> <p>4 in fact, what I was most impressed with, is he never --</p> <p>5 he just didn't present the good things. He presented</p> <p>6 all the metrics and exactly where we stood. So you</p> <p>7 could really ascertain where we needed to work and where</p> <p>8 we needed to continue to perform better.</p> <p>9 Q. Did that ability on the part of Mr. Spence</p> <p>10 allow you to form a business judgment with respect to</p> <p>11 his leadership skills?</p> <p>12 A. Yes, sir.</p> <p>13 Q. And would you explain how, please.</p> <p>14 A. His leadership skills and how he was bringing</p> <p>15 the team together to recognize where we stood on these</p> <p>16 metrics, we always weren't at the top. There were many</p> <p>17 areas that we needed to improve, and he was able to, as</p> <p>18 I say, really coalesce the team to recognize where we</p> <p>19 needed to improve, and where we could improve quickly.</p> <p>20 We couldn't get, you know, to the top immediately, but</p> <p>21 where we could start pecking away at improving our</p> <p>22 position within our competitors.</p> <p>23 Q. Did you discuss your business judgment with</p> <p>24 respect to his leadership skills with the other board</p> <p>25 members?</p>	<p>Page 187</p> <p>1 A. Yes, sir.</p> <p>2 Q. Did he analyze those facts, data, and that</p> <p>3 information?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Based on that analysis of those facts, data,</p> <p>6 and information, were you able to form a business</p> <p>7 judgment as to Mr. Spence's qualifications to be</p> <p>8 president of the bank?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Did you discuss your business judgment with</p> <p>11 the other board members?</p> <p>12 A. Yes, sir.</p> <p>13 Q. What was your business judgment and did the</p> <p>14 other board members agree with it?</p> <p>15 MR. SABA: Objection as to form. Go ahead.</p> <p>16 MR. CIOFFI: Go ahead.</p> <p>17 THE WITNESS: My business judgment, and as</p> <p>18 a -- also agreed to by other members, was that Tim</p> <p>19 was developing rapidly and certainly had the skills</p> <p>20 that we thought was going to be required to be the</p> <p>21 president.</p> <p>22 BY MR. CIOFFI:</p> <p>23 Q. Turn to the next page, please, page 5, there's</p> <p>24 a -- the first full paragraph, would you read?</p> <p>25 A. "Thereafter, Mr. Spence discussed the plans</p>

<p>1 for digital transformation and reviewed the consumer and 2 commercial focus areas for 2020." 3 Q. Let me stop you there. Did Mr. Spence have a 4 particular expertise in addition to everything you've 5 articulated with respect to digital banking? 6 A. Yes, sir. 7 Q. Would you describe that expertise? 8 A. His expertise really came from what he was 9 able to learn and develop and, you know, in the 10 consultancy business, sell. They sell that expertise 11 and those digital platform ideas to many competitors in 12 the industry. So he brought that depth and breadth of 13 knowledge with him when he came to the bank, and as I 14 said earlier, one of the first times we saw it 15 articulated within our management team. 16 Q. And presenting to you information about 17 digital transformation of the banking industry, did 18 Mr. Spence present to you objective facts, data, and 19 information? 20 A. Yes, sir. 21 Q. Did he analyze those facts, data, and 22 information? 23 A. Yes, sir. 24 Q. And how would you assess his ability to 25 understand and analyze that data, those facts, and that</p>	<p>Page 188</p>	<p>1 presented. As I said earlier this morning, every day 2 everyone was being interviewed. So, yes, we did that. 3 We talked amongst ourselves and would always reach a 4 consensus. 5 Q. At this point in time, in December of 2019, 6 was that sentiment about Mr. Spence held unanimously by 7 the board? 8 MR. SABA: Objection. 9 THE WITNESS: Yes, sir. 10 BY MR. CIOFFI: 11 Q. Did you or anyone on the board form a business 12 judgment that anyone else on the enterprise team, 13 including but not limited to Mr. McHugh, possess 14 anything comparable to Mr. Spence's strategic vision, 15 strategic planning, presentation skills, knowledge of 16 Fintech, leadership skills? 17 MR. SABA: Objection. Go ahead, you can 18 answer. 19 THE WITNESS: No. We felt -- my business 20 judgment and my colleagues on the board's business 21 judgment -- was that Tim was, you know, far and 22 above any other candidate. 23 BY MR. CIOFFI: 24 Q. If you could direct your attention to 25 Exhibit 9 now. Go ahead and describe this document</p>	<p>Page 190</p>
<p>1 information? 2 A. He had a tremendous acumen to understand the 3 digital information, the digital space, and then be able 4 to explain it to those people who did not have, you 5 know, that deep IT digital transformation background. 6 Q. Based on this presentation, did you discuss 7 with the other board members the depth and breadth of 8 Mr. Spence's knowledge of the industry, his knowledge of 9 Fintech, his knowledge of the strategic initiatives and 10 goals of the company and his leadership skills with the 11 other board members? 12 A. Yes, sir. 13 Q. And what was their assessment? 14 A. Again, we felt he was developing rapidly and 15 he brought a new depth -- and Greg was outstanding at 16 understanding this as well, but Tim brought a new depth 17 and breadth of information that he saw from outside the 18 banking industry, which was very helpful. 19 Q. This depth and breadth of knowledge on the 20 part of Mr. Spence, at this point in time did the board 21 members have an opportunity to compare it to other 22 members of the enterprise team? 23 A. We continuously observed, continuously 24 assessed the presentation skills and the depth and 25 breadth and the acumen of the executives as they</p>	<p>Page 189</p>	<p>1 again. I know you did in your prior testimony. Go 2 ahead and describe it, just so we can put it in context 3 of what we were just talking about. 4 A. This is a document to all of the board members 5 from Bob Shaffer, and it appears to a couple people in 6 management as well, Greg Carmichael, and I think -- I 7 think Paula at the time was in the HR department. But 8 anyway -- and copied Bob Shaffer as well, who's in the 9 HR department. But this is a Fifth Third Talent 10 Management and Succession Planning Document for Board 11 Meeting on December 17, 2019. 12 Q. I'd like to direct your attention to again at 13 the bottom, this numbering system we call Bates numbers, 14 1135; do you see that? Mr. Saba asked you some 15 questions about this, but I want to direct your 16 attention to that section of this page that talks about 17 potential next positions for Mr. Spence; do you see 18 that? 19 A. Uh-huh. 20 Q. Across from that it shows president in one to 21 two years; do you see that? 22 A. Yes, sir. 23 Q. And the CEO in three-plus years? 24 A. Yes, sir. 25 Q. Did, in fact, those potentials materialize?</p>	<p>Page 191</p>

<p style="text-align: right;">Page 192</p> <p>1 A. They did.</p> <p>2 Q. And at the time of this document, was it the</p> <p>3 consensus of the board that Tim could become president</p> <p>4 in one to two years?</p> <p>5 A. It was the consensus of the board that we were</p> <p>6 hoping that he would continue to develop to be able to</p> <p>7 get the job, but there was no decision at that time that</p> <p>8 the job was his.</p> <p>9 Q. Right. And is the same thing true of the CEO</p> <p>10 position?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Is it accurate to say that there was a</p> <p>13 consensus around the fact that he was the leading</p> <p>14 candidate?</p> <p>15 A. Absolutely.</p> <p>16 Q. Is that because of what you just described in</p> <p>17 terms of his strategic vision, his leadership, his depth</p> <p>18 and breadth of knowledge of the industry?</p> <p>19 A. Yes. His business acumen, leadership skills,</p> <p>20 strategic vision, and just his overall performance.</p> <p>21 Q. Going back to Exhibit 10, do you see that?</p> <p>22 A. Okay.</p> <p>23 Q. So we went through Mr. Spence's presentation.</p> <p>24 And I believe your earlier testimony was this was but</p> <p>25 one of many presentations by Mr. Spence to the board; is</p>	<p style="text-align: right;">Page 194</p> <p>1 your judgment?</p> <p>2 A. Well, I saw him developing. Remember, we</p> <p>3 hired Tim in 2015.</p> <p>4 Q. Right.</p> <p>5 A. And he's been through a very rapid development</p> <p>6 cycle through that period of time. So not from the very</p> <p>7 beginning, but as he has continued to develop, I see</p> <p>8 him, you know, at that level that I say, you know, at</p> <p>9 the top shelf of all the trillionaire banks.</p> <p>10 Q. I want to direct your attention to Exhibit 14</p> <p>11 that Mr. Saba marked. Do you see that? Directing your</p> <p>12 attention to what's numbered as page 4, it has the Bates</p> <p>13 number 212534; do you see that?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Is this another presentation by Mr. Spence?</p> <p>16 A. Yes. This is a presentation on the Three Year</p> <p>17 Strategic Plan in February of 2020.</p> <p>18 Q. Would you read the first sentence of that</p> <p>19 first paragraph on 212534, please?</p> <p>20 A. "Next, Mr. Spence discussed the Three-Year</p> <p>21 Strategic Plan. He noted that, based on OCC</p> <p>22 requirements, the strategic plan was presented in</p> <p>23 written form as included with the materials for the</p> <p>24 meeting. He began" to review -- or "He began the review</p> <p>25 of this plan with a discussion of the strategic context,</p>
<p style="text-align: right;">Page 193</p> <p>1 that right?</p> <p>2 MR. SABA: Objection. Go ahead, you can</p> <p>3 answer.</p> <p>4 THE WITNESS: Yes, sir.</p> <p>5 BY MR. CIOFFI:</p> <p>6 Q. I believe your testimony was there were</p> <p>7 dozens; is that correct?</p> <p>8 MR. SABA: Objection. Leading. Go ahead, you</p> <p>9 can answer.</p> <p>10 THE WITNESS: Yes, I sat through dozens of</p> <p>11 presentations that Mr. Spence made.</p> <p>12 BY MR. CIOFFI:</p> <p>13 Q. With respect to those other presentations, how</p> <p>14 would you assess Mr. Spence's depth of and breadth of</p> <p>15 knowledge of the industry, his strategic vision, his</p> <p>16 leadership skills, as demonstrated in those other</p> <p>17 presentations?</p> <p>18 A. I would say that they were exemplary. I've --</p> <p>19 you know, throughout my career, I've had a tremendous</p> <p>20 amount of vision inside of all the major -- the</p> <p>21 trillionaire banks, because I used to present to them</p> <p>22 all the time and they would come and present to me. And</p> <p>23 I would stack Tim up with any of the leads of the</p> <p>24 trillionaire banks. I think he is of that caliber.</p> <p>25 Q. And is this true prior to December of 2019, in</p>	<p style="text-align: right;">Page 195</p> <p>1 which included a discussion of the macroeconomic</p> <p>2 context, technological developments, and M&A markets."</p> <p>3 Q. Let me stop you there. So with respect to</p> <p>4 macroeconomic context, technological developments, M&A</p> <p>5 markets, and overall strategic plan, did Mr. Spence</p> <p>6 present to you objective facts, data, and information?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Did he present to you an analysis of those</p> <p>9 facts, that data, and that information?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Based on his presentation, were you able to</p> <p>12 form a business judgment as to his depth and breadth of</p> <p>13 knowledge about technological developments, M&A markets,</p> <p>14 macroeconomic context, and strategic context?</p> <p>15 A. Yes, sir.</p> <p>16 MR. SABA: Objection.</p> <p>17 BY MR. CIOFFI:</p> <p>18 Q. What was that judgment that you were able to</p> <p>19 form?</p> <p>20 A. That we felt that Mr. Spence possessed the</p> <p>21 ability to frame a vision of what, in his opinion, could</p> <p>22 happen over the next three years. It's not always</p> <p>23 perfect, but what could happen, looking at different</p> <p>24 risks, different variables for the board to, you know,</p> <p>25 be able to have a good understanding of where some of</p>

<p>1 the positives could be, but where some of the pitfalls</p> <p>2 could be of the business going forward.</p> <p>3 Q. Did you discuss your business judgment at this</p> <p>4 point in time in February of 2020 with other members of</p> <p>5 the board?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Did other members of the board share your</p> <p>8 assessment of Mr. Spence?</p> <p>9 MR. SABA: Objection.</p> <p>10 MR. CIOFFI: You may answer.</p> <p>11 THE WITNESS: Yes, sir.</p> <p>12 BY MR. CIOFFI:</p> <p>13 Q. Also in those discussions with the other board</p> <p>14 members, did you have an opportunity to compare and</p> <p>15 contrast Mr. Spence's depth and breadth of knowledge,</p> <p>16 his strategic vision, his knowledge of technology, his</p> <p>17 knowledge of macroeconomic context, his knowledge of M&A</p> <p>18 matters, with other members of the enterprise team?</p> <p>19 A. Well, other members of the enterprise team did</p> <p>20 not present this data. This was under Mr. Spence's</p> <p>21 peer, you know, review, his -- I shouldn't say peer</p> <p>22 review, but his organizational review, and but, you</p> <p>23 know, what was so impressive was that he had the base</p> <p>24 knowledge, but he had the ability, as I said earlier, to</p> <p>25 explain this data, which is very, very complex, but</p>	<p>Page 196</p> <p>1 Q. And --</p> <p>2 A. It was clear that the board wanted to have an</p> <p>3 outside opinion, therefore due diligence on, are we</p> <p>4 missing anything?</p> <p>5 Q. How did the board go about securing that due</p> <p>6 diligence for that outside evaluation?</p> <p>7 A. I don't recall the exact dates or the timing,</p> <p>8 but sometime I believe over early summer the -- our lead</p> <p>9 director, Marsha Williams, would have been involved with</p> <p>10 the Human Capital Compensation Committee as well as the</p> <p>11 CEO, the head of HR, to hire an outside firm to provide</p> <p>12 that assessment.</p> <p>13 Q. I want to direct your attention to a couple of</p> <p>14 exhibits and see if that refreshes your memory as to the</p> <p>15 time frame. Will you look at Exhibit 24, please.</p> <p>16 A. Got it.</p> <p>17 Q. And then if you would, if you would look at</p> <p>18 Exhibit 21.</p> <p>19 A. Okay.</p> <p>20 Q. Based on the dates of those documents, are you</p> <p>21 able to determine approximately when the board went to</p> <p>22 an outside consultant to conduct the due diligence in</p> <p>23 the vetting of Mr. Spence?</p> <p>24 MR. SABA: Objection. Go ahead, you can</p> <p>25 answer.</p>
<p>Page 197</p> <p>1 explain how it can affect all parts of the business</p> <p>2 going forward.</p> <p>3 Q. In your business judgment at this point in</p> <p>4 time, did any other member of the enterprise team,</p> <p>5 including but not limited to Mr. McHugh, have that kind</p> <p>6 of ability?</p> <p>7 MR. SABA: Objection.</p> <p>8 THE WITNESS: No.</p> <p>9 BY MR. CIOFFI:</p> <p>10 Q. Based on the depth and breadth of knowledge of</p> <p>11 the industry, of technology, macroeconomic trends, of</p> <p>12 strategic vision, of leadership skills, throughout 2020,</p> <p>13 did Mr. Spence continue to be the leading candidate to</p> <p>14 be president?</p> <p>15 MR. SABA: Objection. Go ahead, you can</p> <p>16 answer.</p> <p>17 THE WITNESS: Yes.</p> <p>18 BY MR. CIOFFI:</p> <p>19 Q. Did there come a time in 2020 where the board</p> <p>20 wanted to validate its assessment or as we sometimes say</p> <p>21 in the industry, pressure test its business judgment</p> <p>22 with respect to Mr. Spence?</p> <p>23 A. Yes. I would call it due diligence.</p> <p>24 Q. Due diligence is a better term?</p> <p>25 A. Yes.</p>	<p>Page 199</p> <p>1 THE WITNESS: I'm sorry, I got lost with your</p> <p>2 question and your objection.</p> <p>3 MR. CIOFFI: That happens with objections.</p> <p>4 Could you read my question back, please?</p> <p>5 Do you want to take a break?</p> <p>6 THE WITNESS: I'm just going to take my jacket</p> <p>7 off.</p> <p>8 (The record was read.)</p> <p>9 MR. SABA: Objection. Go ahead.</p> <p>10 THE WITNESS: Yes. Again, I was close in my</p> <p>11 assessment before. It was early summer, so it</p> <p>12 looks like it started around June 8th, and then the</p> <p>13 report that came back on the profile around</p> <p>14 July 23rd. So it was over the early summer,</p> <p>15 midsummer time frame.</p> <p>16 BY MR. CIOFFI:</p> <p>17 Q. What did the board do in order to commence its</p> <p>18 due diligence with respect to Mr. Spence?</p> <p>19 MR. SABA: Objection. Go ahead, you can</p> <p>20 answer.</p> <p>21 THE WITNESS: The board did hire a firm by the</p> <p>22 name of RHR International, who is one of the top</p> <p>23 firms in the field of assessing executives and</p> <p>24 assessing their abilities and their interpersonal</p> <p>25 skills, you know, for the possible potential</p>

<p>1 advancement within their company.</p> <p>2 BY MR. CIOFFI:</p> <p>3 Q. I want to direct your attention to Exhibit</p> <p>4 Number 25. Will you look at that?</p> <p>5 A. Got it.</p> <p>6 Q. Is this the first step in the due diligence</p> <p>7 process of vetting Mr. Spence?</p> <p>8 A. Yes, sir.</p> <p>9 Q. What is this document again?</p> <p>10 A. This document is, as stated here, the final --</p> <p>11 what they call competency model developed for the CEO in</p> <p>12 2015. It talks about that, but this is the final</p> <p>13 document of the profile of what working with RHR</p> <p>14 International and with the board what we believe the</p> <p>15 profile would be for our next CEO.</p> <p>16 Q. Directing your attention to the first sentence</p> <p>17 of this document, which is on page 1, it's 1076. Would</p> <p>18 you look at that, please?</p> <p>19 A. "The structure of the competency model</p> <p>20 developed for the CEO in 2015 still largely stands as</p> <p>21 very accurate today."</p> <p>22 Q. What's your interpretation of that sentence?</p> <p>23 MR. SABA: Objection. Go ahead, you can</p> <p>24 answer.</p> <p>25 THE WITNESS: The board is doing a very good</p>	<p>Page 200</p> <p>1 what type of leader is it that we want going</p> <p>2 forward.</p> <p>3 BY MR. CIOFFI:</p> <p>4 Q. This document -- and Mr. Saba took you through</p> <p>5 it -- on 1076 talks about Essential Leadership</p> <p>6 Behaviors; do you see that?</p> <p>7 A. Yes, sir.</p> <p>8 Q. One of them is under the heading of Business</p> <p>9 Management; do you see that?</p> <p>10 A. I do.</p> <p>11 Q. Establishing Strategic Direction; do you see</p> <p>12 that?</p> <p>13 A. Yes.</p> <p>14 Q. And the other subheading, Driving Execution;</p> <p>15 do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. On the next page, Leadership, do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Interpersonal; do you see that characteristic?</p> <p>20 A. Uh-huh, yes.</p> <p>21 Q. Under Interpersonal, Cultivating Networks; do</p> <p>22 you see that?</p> <p>23 A. Yes.</p> <p>24 Q. And then Influencing; do you see that?</p> <p>25 A. Yes.</p>
<p>Page 201</p> <p>1 job. In 2015 we had an assessment of what we felt</p> <p>2 the requirements of the CEO should be and they</p> <p>3 still stand pretty firm today that those are still</p> <p>4 in place or still are required.</p> <p>5 BY MR. CIOFFI:</p> <p>6 Q. So it talks about the model developed for the</p> <p>7 CEO in 2015. Was that the decision by the board to hire</p> <p>8 Mr. Carmichael?</p> <p>9 MR. SABA: Objection. Go ahead, you can</p> <p>10 answer.</p> <p>11 THE WITNESS: I'm not exactly sure the date we</p> <p>12 hired Mr. Carmichael, but that's pretty close. And</p> <p>13 I know that the model we have today pretty much</p> <p>14 mirrors the same as Mr. Carmichael.</p> <p>15 BY MR. CIOFFI:</p> <p>16 Q. Does it also mirror the CEO profile for almost</p> <p>17 all corporations?</p> <p>18 MR. SABA: Objection. Go ahead, you can</p> <p>19 answer.</p> <p>20 THE WITNESS: I mean, almost all corporations</p> <p>21 today go through this similar exercise of a</p> <p>22 profile, and it depends whether you're in</p> <p>23 pharmaceuticals or energy or banking, it depends on</p> <p>24 what type of business you're in, but we all have a</p> <p>25 profile and we all try to come to a consensus on</p>	<p>Page 203</p> <p>1 Q. And on the last page, Personal Attributes,</p> <p>2 Navigating Complexity; do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Demonstrating Resilience; do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Based on the facts, data, information analysis</p> <p>7 that Mr. Spence presented to the board dozens of times,</p> <p>8 was the board able to form a business judgment as to</p> <p>9 whether Mr. Spence satisfied those characteristics?</p> <p>10 MR. SABA: Objection. Go ahead and answer.</p> <p>11 THE WITNESS: Clearly it was a consensus of</p> <p>12 the board and not over -- excuse me, not over just</p> <p>13 one meeting but several meetings, and watching Tim</p> <p>14 develop that he by far was the consensus of the</p> <p>15 board to be our next CEO.</p> <p>16 BY MR. CIOFFI:</p> <p>17 Q. I want to direct your attention to Exhibit 24.</p> <p>18 Do you see that? Exhibit 24.</p> <p>19 A. Got it.</p> <p>20 Q. Mr. Saba also showed you this exhibit in the</p> <p>21 first bullet. Would you read the first bullet?</p> <p>22 A. "Guy agrees that if Tim is 'the' successor,</p> <p>23 don't add Tayfun and Phil formerly."</p> <p>24 Q. And Guy is --</p> <p>25 A. Guy is Guy Beaudin.</p>

<p>Page 204</p> <p>1 Q. Who is that?</p> <p>2 A. Would have been the consultant that we hired</p> <p>3 within RHR International.</p> <p>4 Q. And he agrees that if Tim is the --</p> <p>5 the successor, don't add Tayfun and Phil -- I think it's</p> <p>6 formally, but --</p> <p>7 A. It should be formally, yeah.</p> <p>8 Q. It's a typo. Did the board also agree with</p> <p>9 that statement?</p> <p>10 MR. SABA: Objection. Go ahead, you can</p> <p>11 answer.</p> <p>12 THE WITNESS: I don't recall the details.</p> <p>13 BY MR. CIOFFI:</p> <p>14 Q. Well, going back to your prior testimony, and</p> <p>15 if you look at Exhibit 9, do you see that there?</p> <p>16 A. Got it.</p> <p>17 Q. At this point in time in December of 2019, the</p> <p>18 consensus was forming, I believe you testified, that Tim</p> <p>19 was the leading candidate to be president; is that</p> <p>20 correct?</p> <p>21 MR. SABA: Objection. Go ahead, you can</p> <p>22 answer.</p> <p>23 THE WITNESS: That is correct.</p> <p>24 BY MR. CIOFFI:</p> <p>25 Q. Based on that consensus that was forming, was</p>	<p>Page 206</p> <p>1 the next sentence.</p> <p>2 THE WITNESS: Am I on 24?</p> <p>3 BY MR. CIOFFI:</p> <p>4 Q. Yes.</p> <p>5 A. So schedule a 90 minute, that one?</p> <p>6 Q. No, the next sentence.</p> <p>7 A. "Although he would recommend, at a minimum, we</p> <p>8 discuss with Marsha that she/the board is okay with only</p> <p>9 having Tim assessed by Guy."</p> <p>10 Q. And Marsha is Marsha Williams; is that</p> <p>11 correct?</p> <p>12 A. Yes, sir. She was the lead director.</p> <p>13 Q. She was the lead director, yeah. Do you know</p> <p>14 if there was such a discussion with Marsha Williams?</p> <p>15 A. I don't know.</p> <p>16 Q. Would it surprise you to know that there was</p> <p>17 such a discussion?</p> <p>18 MR. SABA: Objection. Misrepresentation.</p> <p>19 Trying to provide his own testimony. But there's</p> <p>20 no evidence in the record --</p> <p>21 MR. CIOFFI: What are you talking about?</p> <p>22 MR. SABA: You're trying to create testimony</p> <p>23 in evidence that is not in the record.</p> <p>24 MR. CIOFFI: That's ridiculous. It's all in</p> <p>25 the record. It's right. Read my question back,</p>
<p>Page 205</p> <p>1 it the board's view that Tim is the leading candidate,</p> <p>2 is the only person who should be vetted?</p> <p>3 MR. SABA: Objection. Contrary to prior</p> <p>4 testimony. Misrepresents his prior testimony. Go</p> <p>5 ahead, you can answer.</p> <p>6 MR. CIOFFI: Read my question back, please.</p> <p>7 He's trying to disrupt your testimony. So go</p> <p>8 ahead, read my question back, please.</p> <p>9 (The record was read.)</p> <p>10 MR. SABA: Objection. Contrary to prior</p> <p>11 testimony, misrepresents the prior testimony and</p> <p>12 contradicts his prior testimony. You're trying to</p> <p>13 create perjury.</p> <p>14 MR. CIOFFI: Counsel, that's totally</p> <p>15 ridiculous. State your objection, not a speaking</p> <p>16 objection.</p> <p>17 You may answer.</p> <p>18 THE WITNESS: Okay. It clearly was a</p> <p>19 consensus of the board that Tim was our leading</p> <p>20 candidate, but I was not the lead director. I</p> <p>21 don't know whether it was recommended or not to</p> <p>22 look at one more -- more than one. I don't recall</p> <p>23 and I don't recall that I said anything different</p> <p>24 in my earlier testimony.</p> <p>25 MR. CIOFFI: You didn't. But go ahead, read</p>	<p>Page 207</p> <p>1 please.</p> <p>2 (The record was read.)</p> <p>3 MR. SABA: There's no indication in this</p> <p>4 record or this document that there was such a</p> <p>5 discussion.</p> <p>6 MR. CIOFFI: The question stands.</p> <p>7 THE WITNESS: It would not surprise me, but as</p> <p>8 I said, I was not the lead director.</p> <p>9 BY MR. CIOFFI:</p> <p>10 Q. Marsha Williams was the lead director,</p> <p>11 correct?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Sir, I want to direct your attention to what</p> <p>14 Mr. Saba marked as Exhibit 22. Will you look at that,</p> <p>15 please?</p> <p>16 A. Got it.</p> <p>17 Q. What is that document again, please, for the</p> <p>18 record?</p> <p>19 A. This is a board summary for Fifth Third Bank</p> <p>20 presented by RHR International of an assessment of Tim</p> <p>21 Spence.</p> <p>22 Q. Is this part of the due diligence you were</p> <p>23 testifying about earlier?</p> <p>24 A. Yes, sir.</p> <p>25 Q. And this was an independent assessment of</p>

<p>Page 208</p> <p>1 Mr. Spence by RHR; is that correct?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Would you read the executive summary on the</p> <p>4 first page, please? Read it into the record.</p> <p>5 A. "Tim Spence demonstrates a strong fit to the</p> <p>6 leadership characteristics desired in a chief executive</p> <p>7 officer at Fifth Third Bank."</p> <p>8 Q. A little bit slower because she needs to take</p> <p>9 it down.</p> <p>10 A. I'm sorry.</p> <p>11 Q. Keep going.</p> <p>12 A. "He is a creative, forward-thinking strategic</p> <p>13 thinker who balances objective data with his subjective</p> <p>14 experience to derive innovative solutions to business</p> <p>15 challenges. He demonstrates exceptional abilities in</p> <p>16 dealing with complexity and ambiguity and a capacity to</p> <p>17 exercise the business levers most material to having an</p> <p>18 impact on the bottom line. He is a thoughtful and</p> <p>19 thorough decision maker who is disciplined and</p> <p>20 structured in his approach to work. He holds himself to</p> <p>21 high standards of performance but also knows when good</p> <p>22 enough is good enough.</p> <p>23 "A values-based leader, he cares deeply about</p> <p>24 organizational culture and the well-being of its</p> <p>25 employees. He is admired for his ability to adjust his</p>	<p>Page 210</p> <p>1 BY MR. CIOFFI:</p> <p>2 Q. In the exercise of its business judgment, did</p> <p>3 the board come to a conclusion that Mr. McHugh did not</p> <p>4 possess these characteristics?</p> <p>5 MR. SABA: Objection. Go ahead, you can</p> <p>6 answer.</p> <p>7 THE WITNESS: He did not possess them at the</p> <p>8 same level.</p> <p>9 BY MR. CIOFFI:</p> <p>10 Q. In coming to that conclusion, did the board</p> <p>11 decide to name Tim the president of Fifth Third Bank?</p> <p>12 A. Yes, sir.</p> <p>13 Q. In doing so, did the board in any way consider</p> <p>14 age as the factor in that determination?</p> <p>15 MR. SABA: Objection. Go ahead, you can</p> <p>16 answer.</p> <p>17 THE WITNESS: No, sir.</p> <p>18 BY MR. CIOFFI:</p> <p>19 Q. Did you or any member of the board</p> <p>20 discriminate against Mr. McHugh on account of his age?</p> <p>21 MR. SABA: Objection. Go ahead, you can</p> <p>22 answer.</p> <p>23 THE WITNESS: Absolutely not.</p> <p>24 BY MR. CIOFFI:</p> <p>25 Q. Was the decision to name Tim Spence the</p>
<p>Page 209</p> <p>1 leadership approach based on what is required by the</p> <p>2 individual and the circumstance at hand. He is a</p> <p>3 compelling speaker who projects a passionate message to</p> <p>4 his audience. His diplomatic manner allows him to</p> <p>5 challenge the ideas of others without creating</p> <p>6 defensiveness or resistance, which facilitates his</p> <p>7 ability to gain buy-in to his strategies and objectives.</p> <p>8 He perseveres in the face of difficulties and has</p> <p>9 effective strategies in place to manage the stresses and</p> <p>10 strengths inherent in an executive position.</p> <p>11 "As a continuous learner, Tim pushes himself</p> <p>12 to further hone his skills. He is very insightful</p> <p>13 regarding his strengths and weaknesses and remains open</p> <p>14 to feedback and ongoing development."</p> <p>15 Q. As part of the iterative process and the</p> <p>16 discussions within the board, did the board in the</p> <p>17 exercise of its business judgment come to the same</p> <p>18 conclusions about Tim's characteristics?</p> <p>19 A. Yes, sir.</p> <p>20 Q. In the exercise of its business judgment, did</p> <p>21 the board view any other member of the enterprise team,</p> <p>22 including but not limited to Mr. McHugh, as possessing</p> <p>23 these characteristics?</p> <p>24 A. Not at this level.</p> <p>25 MR. SABA: Objection.</p>	<p>Page 211</p> <p>1 president of Fifth Third Bank based on the</p> <p>2 qualifications that you described in your testimony this</p> <p>3 afternoon?</p> <p>4 MR. SABA: Objection. Go ahead, you can</p> <p>5 answer.</p> <p>6 THE WITNESS: The consensus -- my judgment and</p> <p>7 the consensus of the full board was that Tim</p> <p>8 possessed superior qualities in all of the things I</p> <p>9 testified earlier today.</p> <p>10 BY MR. CIOFFI:</p> <p>11 Q. Did Mr. Carmichael tell the board to appoint</p> <p>12 Tim Spence as president of Fifth Third Bank?</p> <p>13 A. No, sir. That's the board's job.</p> <p>14 Q. Did the board exercise its independent</p> <p>15 judgment, its independent business judgment, in naming</p> <p>16 Tim Spence president of Fifth Third Bank?</p> <p>17 MR. SABA: Objection as to form. Go ahead,</p> <p>18 you can answer.</p> <p>19 THE WITNESS: Yes, sir.</p> <p>20 BY MR. CIOFFI:</p> <p>21 Q. Did RHR tell the board to name Tim Spence</p> <p>22 president of Fifth Third Bank?</p> <p>23 A. No, sir.</p> <p>24 Q. Did anyone tell the board to name Tim Spence</p> <p>25 the president of Fifth Third Bank?</p>

<p>1 MR. SABA: Objection.</p> <p>2 THE WITNESS: No, sir. It was a board</p> <p>3 decision.</p> <p>4 BY MR. CIOFFI:</p> <p>5 Q. In making that decision, did the board</p> <p>6 exercise its sound and independent business judgment?</p> <p>7 MR. SABA: Objection.</p> <p>8 THE WITNESS: Yes, sir.</p> <p>9 MR. CIOFFI: Why don't we go off the record.</p> <p>10 I think he has to change the tapes. I may or may</p> <p>11 not have more questions.</p> <p>12 THE WITNESS: Okay.</p> <p>13 THE VIDEOGRAPHER: The time is 5:10 p.m.</p> <p>14 We're going off the record.</p> <p>15 (A recess was taken from 5:11 p.m. to</p> <p>16 5:22 p.m.)</p> <p>17 THE VIDEOGRAPHER: The time is 5:22 p.m.</p> <p>18 We're back on the record.</p> <p>19 MR. CIOFFI: I have no further questions.</p> <p>20 FURTHER EXAMINATION</p> <p>21 BY MR. SABA:</p> <p>22 Q. Mr. Heminger, during your -- the questions</p> <p>23 asked by Mr. Cioffi, you indicated that one to two times</p> <p>24 a year the board will update the files and how we see an</p> <p>25 executive. What files were you talking about?</p>	<p>Page 212</p> <p>1 were updating, you would refer to those talent profiles</p> <p>2 that we see in Exhibit Number 9; is that right?</p> <p>3 A. Correct.</p> <p>4 Q. And so when would you do the compensation</p> <p>5 review?</p> <p>6 A. Usually at the end of February.</p> <p>7 Q. All right. And when would be the second time</p> <p>8 that you would review them?</p> <p>9 A. This document is -- this is done usually at</p> <p>10 the December board meeting, the full talent review is</p> <p>11 done at the December board meeting.</p> <p>12 Q. At the December board meeting?</p> <p>13 A. And in February -- end of February when we do</p> <p>14 the annual compensation is when we look to see if</p> <p>15 there's any updates.</p> <p>16 Q. All right. And that would be done each year;</p> <p>17 is that correct?</p> <p>18 A. I'm sorry?</p> <p>19 Q. That would be done each year, each December</p> <p>20 and each February; is that correct?</p> <p>21 A. That's my understanding, yes.</p> <p>22 Q. Mr. Cioffi was asking you about the top five</p> <p>23 compensated employees?</p> <p>24 A. Uh-huh.</p> <p>25 Q. You indicated that the compensation reflects</p>
<p>Page 213</p> <p>1 A. I'm talking about the executive succession</p> <p>2 plan. The same document that we reviewed.</p> <p>3 Q. So the board would update -- which document</p> <p>4 are you referring to specifically? Is it the document</p> <p>5 attached to Exhibit 9? Did you hear my question,</p> <p>6 Mr. Heminger?</p> <p>7 A. I'm looking for the document.</p> <p>8 Q. Okay.</p> <p>9 A. Just hang loose. I think this is it right</p> <p>10 here. It's this Exhibit 22, it's this type of document</p> <p>11 that we would just -- we would review this one to two</p> <p>12 times a year, just to see how the executive is doing</p> <p>13 versus the, you know, behavior ratings.</p> <p>14 Q. So you would review the board summary provided</p> <p>15 by RHR twice a year?</p> <p>16 A. Well, that's RHR. No, it is --</p> <p>17 Q. Sir, let me refer you to Exhibit Number 9 and</p> <p>18 see if that's the document you are referring to. Turn</p> <p>19 to the second page of it.</p> <p>20 A. Okay. This is what I'm looking at, was</p> <p>21 looking for. So these documents of the individuals. We</p> <p>22 would just have an update one time in this level of</p> <p>23 detail, and then another time of the year when we do</p> <p>24 compensation, how's the person doing.</p> <p>25 Q. So when you're referring to the files that you</p>	<p>Page 215</p> <p>1 their value to Fifth Third; do you recall that?</p> <p>2 A. I do.</p> <p>3 Q. And so based on that, Lars Anderson would have</p> <p>4 more value to Fifth Third than Mr. Spence?</p> <p>5 MR. CIOFFI: Objection to the form.</p> <p>6 Mischaracterizes his testimony.</p> <p>7 BY MR. SABA:</p> <p>8 Q. Mr. Heminger?</p> <p>9 MR. CIOFFI: No, you may answer.</p> <p>10 THE WITNESS: Mr. Anderson was hired long</p> <p>11 before Mr. Spence, and he was brought in at a</p> <p>12 higher value, as you'll -- as I stated in my</p> <p>13 testimony, we had discussions with the board and</p> <p>14 Mr. Anderson is no longer in that position.</p> <p>15 BY MR. SABA:</p> <p>16 Q. But at that point in time, he would have</p> <p>17 reflected more value to the company than Mr. Spence?</p> <p>18 MR. CIOFFI: Objection to the form. What is</p> <p>19 that point? What you referred to, "that"?</p> <p>20 BY MR. SABA:</p> <p>21 Q. So let's go back to 2019 and 2020, where</p> <p>22 Mr. Anderson's compensation exceeded that of</p> <p>23 Mr. Spence's. He would have reflected more value to</p> <p>24 Fifth Third than Mr. Spence, correct?</p> <p>25 MR. CIOFFI: Objection, misstates his</p>

<p>1 testimony, mischaracterizes the facts. He has</p> <p>2 answered the question as to why.</p> <p>3 BY MR. SABA:</p> <p>4 Q. Go ahead, Mr. Heminger.</p> <p>5 A. We had hired Mr. Anderson earlier than</p> <p>6 Mr. Spence, and he had many more years of experience,</p> <p>7 and so I wouldn't say that it prescribed more value,</p> <p>8 it's just where he was in his career.</p> <p>9 Q. So the amount of salary an employee is</p> <p>10 receiving may not be indicative of their value to Fifth</p> <p>11 Third; is that correct?</p> <p>12 A. That's correct.</p> <p>13 Q. Since you had Exhibit 9 open, let me go back</p> <p>14 to that for a second. And if you could go back to Fifth</p> <p>15 Third McHugh 001135?</p> <p>16 A. Got it.</p> <p>17 Q. Are you on that page?</p> <p>18 A. Yes, sir.</p> <p>19 Q. And that's Mr. Spence's talent profile; is</p> <p>20 that correct?</p> <p>21 A. Yes, sir.</p> <p>22 Q. And if I -- Mr. Cioffi was pointing out the</p> <p>23 potential next positions and focusing on that it says</p> <p>24 president, one to two years and CEO three-plus years; is</p> <p>25 that correct?</p>	<p>Page 216</p> <p>1 MR. CIOFFI: That's what he said.</p> <p>2 MR. SABA: Mike, let me finish my question. I</p> <p>3 know you want to coach your witness. I know you</p> <p>4 want to try and create an answer that's not there.</p> <p>5 Let me finish my question.</p> <p>6 MR. CIOFFI: I can't coach him on what he's</p> <p>7 already said.</p> <p>8 BY MR. SABA:</p> <p>9 Q. Do you know whether or not that information</p> <p>10 was put into this talent deck for Mr. Spence by</p> <p>11 Mr. Shaffer and Mr. Carmichael before it was ever seen</p> <p>12 by Mr. McCallister?</p> <p>13 A. I do not.</p> <p>14 Q. What about Ms. Williams before she ever saw</p> <p>15 it, do you know if that's the case?</p> <p>16 A. I do not.</p> <p>17 Q. You indicated that when you first joined Fifth</p> <p>18 Third they were only doing auto loans. When did Fifth</p> <p>19 Third switch out of just doing auto loans?</p> <p>20 A. That's not what I said. I said when I first</p> <p>21 joined Fifth Third, one of the biggest businesses was</p> <p>22 auto loans and we needed to learn how to do something</p> <p>23 other than just auto loans.</p> <p>24 Q. Was auto loans Fifth Third's largest portion</p> <p>25 of their business when you joined?</p>
<p>Page 217</p> <p>1 A. That's correct.</p> <p>2 Q. Who put that information in there?</p> <p>3 A. That would have been determined by the head of</p> <p>4 HR, the head of the talent and compensation committee,</p> <p>5 at the time would have been Mr. McCallister. Marsha</p> <p>6 Williams, lead independent director, and then Greg</p> <p>7 Carmichael, CEO, is how they would have presented this.</p> <p>8 But then the board has a very rigorous -- the board</p> <p>9 doesn't -- we don't rubber stamp anything. We would</p> <p>10 have a very rigorous discussion on whether or not we</p> <p>11 agree with that.</p> <p>12 Q. And with respect to that information being in</p> <p>13 there, do you know if that was first put in there by</p> <p>14 Mr. Shaffer and Mr. Carmichael?</p> <p>15 A. I don't.</p> <p>16 MR. CIOFFI: Objection. He answered the</p> <p>17 question. You're arguing with him. You want your</p> <p>18 answer. He answered the question.</p> <p>19 MR. SABA: No.</p> <p>20 MR. CIOFFI: Marsha Williams --</p> <p>21 MR. SABA: I didn't finish my --</p> <p>22 MR. CIOFFI: Mike McCallister, Greg</p> <p>23 Carmichael, head of HR.</p> <p>24 MR. SABA: It's nice that you have your</p> <p>25 answer, Mike.</p>	<p>Page 219</p> <p>1 A. No.</p> <p>2 Q. What was the largest portion of their</p> <p>3 business?</p> <p>4 A. Probably mortgage. Probably commercial</p> <p>5 banking. But auto loans was a big piece of it.</p> <p>6 Q. And what line of loans has Mr. Spence added</p> <p>7 since that time?</p> <p>8 A. I don't know.</p> <p>9 Q. Has he added any?</p> <p>10 A. Any --</p> <p>11 Q. Any lines of loans that the bank engages in</p> <p>12 that they didn't engage in before he came?</p> <p>13 A. Oh, yes. We've gone to several things. We</p> <p>14 have this company called Dividend and this company</p> <p>15 called Provide, which does solo work, ESG-type work. A</p> <p>16 number of Fintech type of, you know, technologies on</p> <p>17 being able to provide financial services.</p> <p>18 Q. And which of those are added by Mr. Spence and</p> <p>19 which were added by other executives?</p> <p>20 A. I just stated those are the ones that Tim</p> <p>21 provided.</p> <p>22 Q. And are those -- do those provide a new line</p> <p>23 of loans for the bank?</p> <p>24 A. Yes, sir.</p> <p>25 Q. What type of loans do those provide?</p>

<p>Page 220</p> <p>1 A. Consumer and commercial lending.</p> <p>2 Q. And what year was that added?</p> <p>3 A. Over the last three or four years we've been</p> <p>4 adding these companies or these parts of business.</p> <p>5 Q. If I can refer you back to Exhibit 10.</p> <p>6 A. Got it.</p> <p>7 Q. If you can go to page 2 again, McHugh 007109.</p> <p>8 Do you see that there?</p> <p>9 A. Yes.</p> <p>10 Q. Mr. Cioffi had you focus on the first sentence</p> <p>11 on the bottom, below Market Context; do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. And it refers to again, "Mr. Spence provided</p> <p>14 an overview of the strategy plan review as included in</p> <p>15 the materials for the meeting."</p> <p>16 Who prepared the strategy plan review?</p> <p>17 A. With me?</p> <p>18 Q. No. As referenced here on Exhibit Number 10,</p> <p>19 Fifth Third McHugh 007109. It references the strategy</p> <p>20 plan review as included in the materials. Do you know</p> <p>21 who included -- excuse me, who prepared the strategy</p> <p>22 plan review?</p> <p>23 A. No. It would have been a large team under the</p> <p>24 direction of Mr. Spence, but number of members that will</p> <p>25 provide economic data, credit data, market data, but it</p>	<p>Page 222</p> <p>1 Q. Who prepared the three-year strategic plan?</p> <p>2 A. I don't know, but several people.</p> <p>3 Q. Do you know who any of the specific people</p> <p>4 were?</p> <p>5 A. Well, all of the enterprise -- not all the</p> <p>6 enterprise leaders. HR wouldn't have been involved.</p> <p>7 Well, they could be involved on the labor side. General</p> <p>8 counsel would not be involved, but generally members of</p> <p>9 the commercial banking, consumer banking, economics,</p> <p>10 CFO, a number of people, all bring it together and then</p> <p>11 Mr. Spence presented it.</p> <p>12 Q. He's presenting information that other people</p> <p>13 prepared, correct?</p> <p>14 MR. CIOFFI: Objection. Misstates the</p> <p>15 testimony.</p> <p>16 THE WITNESS: No, I disagree with that. Other</p> <p>17 people presented objective data, as you like to</p> <p>18 call it, but it takes a certain skill to be able to</p> <p>19 bring it all together and to explain it and</p> <p>20 articulate it at a board level.</p> <p>21 BY MR. SABA:</p> <p>22 Q. And that's what he's explaining? He's</p> <p>23 explaining what other people brought together in the</p> <p>24 three-year strategic plan, correct?</p> <p>25 MR. CIOFFI: Objection. That's not what he</p>
<p>Page 221</p> <p>1 would be a big team.</p> <p>2 Q. There's a number of members of the enterprise</p> <p>3 team that are involved in preparing that information; is</p> <p>4 that right?</p> <p>5 MR. CIOFFI: Objection. Counsel, you're</p> <p>6 testifying.</p> <p>7 MR. SABA: It's a question.</p> <p>8 MR. CIOFFI: If you want to file a question.</p> <p>9 BY MR. SABA:</p> <p>10 Q. There are a number of members of the</p> <p>11 enterprise team that are involved in that, correct?</p> <p>12 A. I would assume so.</p> <p>13 Q. Yes. If you could refer to Exhibit 14,</p> <p>14 please.</p> <p>15 A. Got it.</p> <p>16 Q. And if you could turn to the second page of</p> <p>17 Exhibit 14, Fifth Third McHugh 212534. Do you have that</p> <p>18 page?</p> <p>19 A. Got it.</p> <p>20 Q. All right. And Mr. Cioffi was focused on</p> <p>21 beginning with the first sentence at the top there,</p> <p>22 "Next, Mr. Spence discussed the Three-Year Strategic</p> <p>23 Plan."</p> <p>24 Do you see that?</p> <p>25 A. Yes.</p>	<p>Page 223</p> <p>1 testified to. The record will speak for itself.</p> <p>2 You're trying to put words in his mouth.</p> <p>3 MR. SABA: That's not the case.</p> <p>4 MR. CIOFFI: It is the case.</p> <p>5 MR. SABA: Go ahead.</p> <p>6 THE WITNESS: That's the way it's done in</p> <p>7 every business I've ever been involved with. One</p> <p>8 person doesn't do it all.</p> <p>9 BY MR. SABA:</p> <p>10 Q. Have you ever reviewed the revenue generated</p> <p>11 by Mr. Spence's digital initiatives?</p> <p>12 A. Parts of it. I don't recall it in total, but</p> <p>13 yes, parts of it.</p> <p>14 Q. And what's your understanding of what the</p> <p>15 revenue has been that's been generated by Mr. Spence's</p> <p>16 digital initiatives?</p> <p>17 A. Off the top of my head, I don't know.</p> <p>18 Q. Referring you back to Exhibit Number 22.</p> <p>19 A. Got it.</p> <p>20 Q. The board summary. And you read the executive</p> <p>21 summary into the record, correct?</p> <p>22 A. Yes.</p> <p>23 Q. Do you know whether or not Mr. Carmichael and</p> <p>24 Mr. Shaffer were involved in reviewing and/or otherwise</p> <p>25 editing Exhibit Number 22?</p>

<p style="text-align: right;">Page 224</p> <p>1 A. I am not aware.</p> <p>2 Q. You indicated and Mr. Cioffi asked you several</p> <p>3 times over and over again whether or not within his</p> <p>4 presentations Mr. Spence references data or numbers. Do</p> <p>5 you ever go through the process of verifying the numbers</p> <p>6 or the data represented by Mr. Spence?</p> <p>7 A. I do. As a board member, I take great pride</p> <p>8 in the homework that I do and understanding the data</p> <p>9 that makes up the material that's presented.</p> <p>10 Q. And what specifically did you do to verify the</p> <p>11 data and the numbers presented by Mr. Spence in any of</p> <p>12 his reports?</p> <p>13 A. Well, first of all, you have to have the</p> <p>14 business acumen to understand the data to begin with,</p> <p>15 which I do. But a case in point, I recall from a</p> <p>16 macroeconomic standpoint some data was being presented</p> <p>17 on inflation, and you might understand that we've had a</p> <p>18 very difficult inflationary period. And one of Tim's</p> <p>19 thoughts and advice was be careful, this is not</p> <p>20 temporary inflation. In fact, this inflation can be</p> <p>21 prolonged. So that's one of the things that really</p> <p>22 stuck with me in understanding that, you know, things</p> <p>23 aren't all going to be simple going forward over the</p> <p>24 last three to four years.</p> <p>25 Q. When did he say that?</p>	<p style="text-align: right;">Page 226</p> <p>1 essentially?</p> <p>2 A. I agree with what Tim was saying, yes.</p> <p>3 MR. SABA: We can go off the record just for</p> <p>4 one minute. I'll be right back.</p> <p>5 THE VIDEOGRAPHER: The time is 5:42 p.m.</p> <p>6 We're going off the record.</p> <p>7 (A recess was taken from 5:43 p.m. to</p> <p>8 5:44 p.m.)</p> <p>9 THE VIDEOGRAPHER: The time is 5:43 p.m. We</p> <p>10 are back on the record.</p> <p>11 MR. SABA: That's all the questions I have at</p> <p>12 this time. As I indicated before, we are</p> <p>13 continuing this in progress.</p> <p>14 MR. CIOFFI: We recognize that you've</p> <p>15 attempted to reserve a right to continue in</p> <p>16 progress. We dispute that you have such a right.</p> <p>17 So at this point in time the witness will read and</p> <p>18 sign the deposition.</p> <p>19 THE VIDEOGRAPHER: The time is 5:44 p.m.</p> <p>20 We're going off the record.</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 225</p> <p>1 A. This would have been during one of the</p> <p>2 strategic planning reviews, probably in the 2020 -- it</p> <p>3 was probably in the 2020, early 2021 time frame.</p> <p>4 Q. And what did you do to go verify that</p> <p>5 information?</p> <p>6 A. I --</p> <p>7 MR. CIOFFI: Objection. He answered that</p> <p>8 already, but go ahead.</p> <p>9 THE WITNESS: Yeah, I'm -- sorry. There.</p> <p>10 I'm -- as I said earlier, I was of the opinion that</p> <p>11 inflationary trends were going to be much more</p> <p>12 difficult from my background and my understanding</p> <p>13 of energy policy, fiscal policy, other inflationary</p> <p>14 tendencies. So from all the data that I have</p> <p>15 observed and I understood from doing a lot of</p> <p>16 economic work myself, I was of the same ilk that</p> <p>17 inflationary period was going to be much more</p> <p>18 difficult than quote to the experts were saying</p> <p>19 outside of the bank.</p> <p>20 BY MR. SABA:</p> <p>21 Q. Did you do anything outside that particular</p> <p>22 board meeting to go verify his data?</p> <p>23 A. I didn't need to. I already had a pretty good</p> <p>24 understanding of it.</p> <p>25 Q. So you agreed with what he was saying,</p>	

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GARY R. HEMINGER

DATE

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DEPOSITION CONCLUDED AT 5:44 p.m.

- - -

C E R T I F I C A T E

STATE OF OHIO :
COUNTY OF HAMILTON : SS

I, Wendy L. Raymer, RPR, CRR, the undersigned, a duly qualified and commissioned notary public within and for the State of Ohio, do hereby certify that before the giving of his aforesaid deposition, GARY R. HEMINGER was by me first duly sworn to depose the truth, the whole truth and nothing but the truth; that the foregoing is the deposition given at said time and place by GARY R. HEMINGER; that said deposition was taken in all respects pursuant to stipulation of counsel; that I am neither a relative of nor employee of any of the parties or their counsel, and have no interest whatever in the result of the action; that I am not, nor is the court reporting firm with which I am affiliated, under a contract as defined in Civil Rule 28 (D).

IN WITNESS WHEREOF, I hereunto set my hand and official seal of office at Cincinnati, Ohio, this 9th day of January, 2023.

My Commission expires
December 6, 2026

S/Wendy L. Raymer, RPR, CRR
Notary Public - State of Ohio

1 DEPOSITION ERRATA SHEET

2 Date Taken: December 20, 2022

3 Case Caption: PHILIP R. MCHUGH

4 vs. FIFTH THIRD BANCORP, et al.

5 DECLARATION UNDER PENALTY OF PERJURY

6 I declare under penalty of perjury
7 that I have read the entire transcript of
8 my deposition taken in the captioned matter
9 or the same has been read to me, and
10 the same is true and accurate, save and
11 except for changes and/or corrections, if
12 any, as indicated by me on the DEPOSITION
13 ERRATA SHEET hereof, with the understanding
14 that I offer these changes as if still under
15 oath.

16 Signed on the _____ day of

17 _____, 20____.

18 _____
19 GARY R. HEMINGER
20
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2 DEPOSITION ERRATA SHEET

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GARY R. HEMINGER

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GARY R. HEMINGER

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